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ANNUAL REPORT

of the

CITY ATTORNEY

CITY AND COUNTY OF SAN FRANCISCO

July 1, 1960 - June 30, 1961



Dion R. Holm
City Attorney



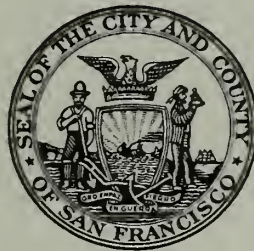
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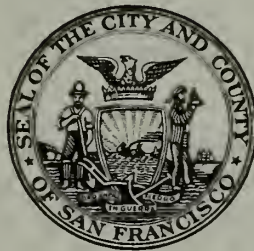
ANNUAL REPORT

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CITY ATTORNEY

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July 1, 1960 - June 30, 1961



Dion R. Holm
City Attorney

LAWRENCE S. MANA
CHIEF DEPUTY CITY ATTORNEY

EDMOND P. BERGEROT
CHIEF TRIAL DEPUTY

DEPUTY CITY ATTORNEYS

NORMAN SANFORD WOLFF
C. WESLEY DAVIS
VIRL BENNEHOFF
BERNARD J. WARD
GEORGE E. BAGLIN
THOMAS J. BLANCHARD
WILLIAM F. BOURNE
DONALD J. KROPP
JOHN ELMER BARRICKLO
THOMAS A. TOOMEY, JR.
JEROME COHEN
AGNES O'BRIEN SMITH
FRANK J. NEEDLES
GEORGE P. AGNOST
WILLIAM E. MULLINS
ROBERT M. DESKY
SAMUEL E. YEE

DION R. HOLM
CITY ATTORNEY
CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

THOMAS M. O'CONNOR
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

RAYMOND J. REYNOLDS
PATRICK R. KELLY
JOHN J. TAHEHY, JR.
THEODORE J. LITTLE
MCMORRIS M. DOW
PAUL J. DI NOIA
ORVILLE I. WRIGHT
ROBERT A. KENEALEY
DONALD J. GARIBALDI
MICHAEL B. FOLEY
JAMES J. STARK
ROLAND J. HENNING
EDMUND A. BACIGALUPI
BEATRICE CHALLISS

PAUL B. HOLM
ADMINISTRATIVE ASSISTANT

ROBERT R. LAUGHEAD
CHIEF VALUATION AND
RATE ENGINEER

September 15, 1961

The Honorable George Christopher
Mayor of San Francisco
200 City Hall
San Francisco 2, California

My dear Mayor:

Attached is the Annual Report in general describing the work performed by the City Attorney's office during the past fiscal year.

After 35 years in this office as Chief Deputy, attorney for the Water Department, the Public Utilities Commission, and finally as City Attorney for the past 13 years, it is my final report. As you are aware, in January my last term of office expires.

When the volume of legal work transacted in this office is reviewed, it is nothing short of miraculous that the work has been accomplished with the limited staff allowed me. Economies in government are much to be desired and every taxpayer applauds them. Despite persistent efforts on my part throughout the years the assistance allowed has been relatively meager. If the work load of this office were transported to attorneys in private practice, the number of attorneys and corresponding stenographic and clerical help would be greatly increased. From a trial standpoint alone, with 1792 cases of all classes from the most trivial to the most highly important matters affecting San Francisco is in itself staggering. We are sued at the rate of 3.2 suits per day based on days when suits may be filed. This rate has been fairly constant for the past 5 years.

Add to the volume of cases the requests for written opinions, as distinguished from innumerable oral opinions, that are given which require research as careful as if an opinion were being written by our appellate or supreme courts.

September 15, 1961

Continuing legal difficulties are anticipated with the Department of Interior and the Department of Agriculture over our water rights and uses of the federal domain. There will be intricate legal matters arise in connection with the contract to be entered into between the city and the Turlock and Modesto Irrigation Districts for the enlargement of Don Pedro Dam and the storage of water due from the city to the Districts when that dam is completed. This entails an expenditure of \$45 million and many agencies, both federal and state, are involved in this project. This will require the direction and services of one who has full knowledge of the Raker Act and the many interpretations that have been given to it, not only by the United States Supreme Court and the lower courts, but by the Department of Interior as well.

Another matter that requires a great deal of study will entail the assembling of studies by economists and cost accountants and possibly engineers for the establishment of our claims in the antitrust suits in which the city feels that it has been overcharged by reason of collusive bidding by the leading electrical manufacturing corporations of the nation. The fact that these corporations were violating the antitrust laws was brought to my attention last fiscal year by reason of proceedings pending in Pennsylvania and in seven cases the companies pleaded guilty and many more entered pleas of nolo contendere. Actions in these matters will be filed before my term of office ends.

Continual checking should be made in the Williams Trust Fund and the Heller Estate, pending in New York courts. The firm of Bigham, Englar, Jones and Houston has been designated by the Board of Supervisors to represent the city under the direction of the City Attorney in this trust and estate matter. There is a third matter pending that involves the remainder of an interest after a life estate known as the Archer M. Huntington trust. At present this office has appeared in connection with this estate which technically is an inter vivos trust.

It was with pleasure that I participated in the termination of the relationship between the nonprofit corporation and the city that formerly was the holding company for the operation of the Union Square Garage. All indebtedness for the project, as you are aware, has been paid off long in advance of the dates originally estimated. San Francisco, with this office showing the way legally, is the first city in the United States to use the underground area

September 15, 1961

of a park or plaza for off-street parking. Throughout the years many cities have written me for the plan we followed and successfully defended before our Supreme Court, which requests I have always answered.

During the past year another item that is gratifying from a lawyer's standpoint is that the Librarian of the Library of Congress had requested copies of all opinions written by me since assuming office in 1949, and asked that they be furnished copies of all current and future opinions emanating from this office. As far as I can ascertain, San Francisco is the only city in the nation that has been requested to supply opinions of the City Attorney.

The work over the years in this office has been universal as it embraces everything from the smallest claim in the Small Claims Court to the most intricate type of litigation that may be conceived and in the years has even included infringements of patents and three admiralty suits. The volume of work could not have been met and completed were it not for the fact that I was blessed with a competent and dedicated staff.

Your attention is directed to an important paragraph in the conclusions of my report that relate to the Redevelopment Agency.

Trusting this report may prove of value to you and to others as well, I remain

Yours respectfully,



DION R. HOLM
City Attorney

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ANNUAL REPORT
OF
CITY ATTORNEY DION R. HOLM

July 1, 1960 - June 30, 1961

The City Attorney is the chief legal officer of the City and County of San Francisco and his duties as prescribed by Section 26 of the Charter provide, among other things, that he must represent the City in all actions and proceedings in which it may be legally interested, or for or against the City and County, or any officer of the City and County; that he must give his advice and opinion in writing to officers, boards and commissions of the City and County; that he must prepare or approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

As the City and County of San Francisco is both a city and a county, the City Attorney performs the duties ordinarily performed by the County Counsel in all matters wherein the City and County of San Francisco is acting as a county.

There is detailed in this annual report of the City Attorney a statement of the activities of the office of the City Attorney for the fiscal year July 1, 1960 to June 30, 1961.

LITIGATION DEPARTMENT

The City and County carries on a multitude of activities of both a governmental and a proprietary nature, and in connection with the said activities much litigation arises in which the City is either a party defendant or a party plaintiff. A great proportion of the work handled by the office of the City Attorney involves representation of the City departments and officers in these matters which are the subject of litigation. The litigation in which the City and County is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Tort litigation in which the City and County is named defendant for personal injury or property damage alleged to have been received constitutes the greatest volume of litigated matters handled by the office of the City Attorney. Such tort litigation arises generally from the operation of the Municipal Railway or from governmental activities performed by the City and County wherein governmental immunity has been waived under the Public Liability Act of 1923, the Motor Vehicle Code, or other statutes.

The preparation of such matters for trial involves extensive work by the members of the staff, particularly since the new discovery procedures which have been instituted under State law and the commencement of the pre-trial procedure by the superior courts of the State of California.

The work of the office in the preparation of these cases involves a review of the investigation, arranging for medical reports to determine the extent of injury, the taking of depositions of the parties to such actions, the pre-trial hearing of the particular case and, finally, the disposition of the case by settlement or trial.

During the fiscal year 1960-1961 the following number of depositions were taken:

Municipal Railway cases	653
Non-Railway cases	<u>172</u>
Total	825

1. Municipal Railway

The Municipal Railway, the transit system operated by the City and County, accounts for the greatest volume of tort litigation handled by the City Attorney's office each year. Following is a table illustrating the work done for the Municipal Railway during the last fiscal year:

Actions filed	380
Actions tried, settled or dismissed	333
Actions pending at end of fiscal year	915
Prayers of actions pending at end of fiscal year . . .	\$26,574,220
Claims filed against Municipal Railway	2,819

This office also rendered services to the Claims Department of the Municipal Railway. In respect to the settlement of claims, except those under \$500, a review is made by this office and a valuation for the purpose of settlement is made on each claim. Written approval of each settlement is given to the Public Utilities Commission and the Controller. Releases and other closing papers are also approved in each instance. During the fiscal year 1,595 such non-litigated claims were settled by the Claims Department after rendition of services in regard thereto by this office.

Of the 333 litigated cases which were disposed of as referred to above, the total of the prayers in said cases was \$9,230,303, and the amount paid by the City in the disposition of said 333 cases was \$960,707, which amount was 10.4% of the total prayers. Following is a breakdown of the cases referred to above:

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments</u>				
Paid	49	\$1,342,907	\$285,171	21.2
Won or dismissed	<u>81</u>	<u>1,610,273</u>	<u>--</u>	<u>--</u>
Total Judgments	130	\$2,953,180	\$285,171	9.7
<u>Litigated Settlements</u>	203	\$6,277,123	\$675,536	10.7
Total Judgments and Litigated <u>Settlements</u>	<u>333</u>	<u>\$9,230,303</u>	<u>\$960,707</u>	<u>10.4</u>

The City Attorney's office also appeared at coroner's hearings and hearings of the criminal division of the Municipal Court where there was the probability of substantial damage claims being subsequently filed against the City and County. Numerous street car, bus and trolley coach operators were represented at such hearings by this office. During the fiscal year this office assisted periodically at meetings of management, operations and personnel of the Municipal Railway, and participated in their discussions and conferences which concerned matters of safety precautions, equipment, public relations and training of personnel.

2. Other Departments

Tort litigation other than Municipal Railway, which has already been discussed, involving the City and County arises generally from statutes wherein governmental immunity from suit has been waived under the provisions of the Public Liability Act of 1923 or the Motor Vehicle Code of the State of California. The trend on the part of the courts has been toward a greater liberality in the interpretation of statutes, and there has also been greater liberality in the actions of judges and juries in the award of damages in such cases. As a consequence, throughout the nation there has been a great increase in the amounts which have been paid by municipalities in such damage actions. This has also encouraged a greater number of lawsuits to be filed against all municipalities.

While such actions involve practically all governmental departments of the City and County, the greater number arise from the operations of the Department of Public Works, which is charged with the responsibility of maintaining our streets, sidewalks, sewers, and other public works.

During the fiscal year there were 738 claims filed against all departments of the City and County, exclusive of the Municipal Railway.

(a) Public Works Department

During the fiscal year, 76 cases involving the Department of Public Works were disposed of by the City Attorney's office, either through settlement or court action. These cases involved actions arising from the condition of sidewalks, curbs or roadways, sewers or equipment of the Department of Public Works. Following is a breakdown of the cases disposed of and the amount paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
76	\$2,199,544	\$64,778	3.04

Sidewalk Cases

As I have also indicated in the past, approximately fifty per cent of the cases in which the Department of Public Works is involved arise from actions wherein it is alleged that there is a dangerous and defective condition of its sidewalks under the Public Liability Act of 1923.

A review of last year's activities concerning sidewalk cases indicates the amount paid out by the City and County of San Francisco has been held to a minimum. Following is a summary as to sidewalk cases disposed of during the fiscal year 1960-1961:

<u>Number of Cases Disposed of</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
38	\$1,312,482	\$23,355	1.78

(b) Departments Other Than
Department of Public Works

A substantial number of tort cases arise from the operation of other departments of the City and County, particularly the San Francisco Unified School District, the Recreation and Park Department, the Police Department, the Health Department, and other such City departments.

A summary of the disposition of the cases of said departments follows:

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Water	19	\$ 37,807	\$ 3,718	9.83
Police	11	293,000	3,026	1.03
Recreation and Park	9	209,661	5,350	2.55
S.F. Unified School Dist.	4	75,791	2,150	2.84
Redevelopment Agency	3	325,000	--	--
Fire	3	255,000	3,500	1.37
Purchasing	3	40,000	--	--
Airport	2	58,755	3,000	5.11
Library	2	115,647	1,500	1.29
Welfare	1	300,000	--	--
Health	1	150	--	--
War Memorial	1	2,142	100	4.67
Tax Collector	1	51	--	--
Superior Court	<u>1</u>	<u>40,000</u>	<u>--</u>	<u>--</u>
Total	61	\$1,753,004	\$22,344	1.27

Recapitulation of Statistics
on Tort Litigation

<u>Department</u>	<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Public Works	76	\$ 2,199,544	\$ 66,778	3.04
Other governmental departments	<u>61</u>	<u>1,753,004</u>	<u>22,344</u>	<u>1.27</u>
Total	137	\$ 3,952,548	\$ 89,122	2.23
Municipal Railway	<u>333</u>	<u>9,230,303</u>	<u>960,707</u>	<u>10.41</u>
Total of all tort litigation	<u>470</u>	<u>\$13,182,851</u>	<u>\$1,049,829</u>	<u>7.96</u>

B. OTHER LITIGATION

Other than the tort litigation reported above, the City and County was involved in substantial litigation during the fiscal year 1960-1961 arising generally from the activities of the various departments, board and commissions and officers of the City and County. Detailed reports as to some of this litigation are set forth in this annual report under separate headings and departments, such as the litigation in connection with the Public Utilities Commission, the Redevelopment Agency, the Parking Authority, the Retirement System, the Public Welfare Department, and in connection with the abatement and condemnation of public nuisances and franchise matters.

Generally, the other litigation in which the City and County was involved, other than that reported under separate headings, infra, arose from the following activities: Eminent domain actions for the acquisition of private property for public purposes; mandate and injunction actions against the Civil Service Commission, the Police Department, the Department of Public Health, the Fire Department, the City Planning Commission, and the Board of Permit Appeals; declaratory relief actions against the San Francisco City and County Employees' Retirement System and the Police Department; actions for alleged breach of contract for construction of public works and for the refund of taxes illegally or erroneously collected; and actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances.

C. APPELLATE LITIGATION

As in past years, this office was engaged in representing the City and County of San Francisco on many appellate matters, involving both appeals from judgments rendered in trial courts and matters of original jurisdiction, during the past fiscal year ending June 30, 1961.

During this period one matter was decided by the State Supreme Court; nine matters were decided by the State District Court of Appeal; and one matter was heard, and determined, by the Appellate Department of the Superior Court.

Following is a listing of the more important appellate matters prepared and tried by our office this past fiscal year:

San Francisco Unified School District v. Superior Court, 55 A.C. 452, tried before the Supreme Court of California, involved discovery proceedings dealing with a treating physician's report, and the claim of attorney-client privilege. The City and County of San Francisco's position was sustained with the Court holding a treating physician must divulge his report to defendant's attorney, when his deposition is taken, and plaintiff cannot invoke the so-called "attorney-client" privilege to suppress information rendered in the report.

Hegerty, et al. v. Soher, et al., 190 A.C.A. 570, involved an appeal by the City from a judgment of the Superior Court wherein it was held, by the trial court, that the longevity pay rates for Los Angeles were "rates of compensation" within the meaning of San Francisco Charter Sections 25.5.1 and 36.2.

On appeal this holding was reversed, in favor of the City, with the Court finding that only basic pay was to be considered in establishing rates of compensation under the aforementioned Charter sections, and that longevity payment was not within the definition of basic pay.

Important law was established in Kotronakis v. City and County of San Francisco, 192 A.C.A. 655, wherein, on appeal from a judgment against the City, which was reversed by the District Court of Appeal, it was held that the abolition of the rule of "governmental immunity" by the State Supreme Court in Muskopf v. Corning Hospital, 55 A.C. 216, had no effect on the Public Liability Act (Government Code, Sections 53050, et seq.).

This reversal of a judgment entered in favor of the plaintiff by the trial court, in effect, held that the courts cannot amend, or repeal, a statute wherein the Legislature has provided that certain conditions must be met before the immunity granted to municipalities will be waived to allow an injured party to prevail against the municipality.

Miller v. City and County of San Francisco, 187 A.C.A. 515, involved an action for trespass, fraud and negligence against certain City officials over the location of a City sewer on private property. The position of the City was sustained, the Court holding that the City was not liable to the purchaser of property who bought the property with knowledge that a city sewer crossed the property, for representations of employees of the City that the City would remove the sewer.

In Hilton Hotels Corporation v. Reuben H. Owens and Central Permit Bureau, 186 A.C.A. 694, our office represented the Director of Public Works in testing the discretion of the Board of Permit Appeals as respects state and local building codes.

It was stipulated between the real party in interest in this case (Hilton Hotels Corporation) and our office, that the petition could be made directly to the Supreme Court so that the litigation might be terminated at the earliest possible date to enable Hilton Hotels Corporation to start construction immediately in the event of a favorable decision. The case was transferred by the Supreme Court to the District Court of Appeal for ruling, and was decided by that court.

Because of the safety provisions dealing with the public as a whole, it was felt a Court determination should be obtained interpreting Section 106 of the San Francisco Building Code and

Section 39 of the Charter. The District Court of Appeal held that the Board of Permit Appeals had the authority to accept alternative materials, and methods of construction, under Section 106 of the Building Code, even though specific requirements were set forth in certain sections of the various local codes, and the State Housing Act, dealing with fire and safety requirements.

Best v. City and County of San Francisco, 184 A.C.A. 433, involved a taxpayer's suit to enjoin and restrain the City and its Recreation and Park Commission from constructing an underground garage in Portsmouth Square. The ruling of the District Court of Appeal interpreted Charter Section 42. In effect the holding of the Court was that the rule of strict construction applicable to Charter provisions does not require that the narrowest possible meaning be given. In other words, a fair and reasonable construction must be made with due regard to the object sought to be accomplished. In the Portsmouth Square case to permit construction and use of garages below public parks so long as there was no unreasonable diminution of the use of the surface for public enjoyment was held to be a reasonable interpretation of Charter Section 42. Noteworthy is the fact that some sort of record was established in concluding the litigation in this case. The entire litigation, from filing of the complaint on February 14, 1960, until denial of the hearing by the Supreme Court on October 26, 1960, including a 5-day Superior Court trial, was disposed of in less than nine months.

Although several other cases were decided by the appellate courts during this period of time, and all involved arduous and meticulous preparation and presentation, the facts and rules of law discussed in these cases by the courts were not unusual in nature, and do not warrant a digest of the cases being included herein. For your information, the following cases, not mentioned heretofore, were also concluded:

City and County v. Muller, Division 2,
District Court of Appeal, 1 Civil No. 19899;

Lippett v. Board of Permit Appeals, Division 1,
District Court of Appeal, 1 Civil No. 19682;

Hsu v. City and County of San Francisco, et al.,
Division 2, District Court of Appeal, 1 Civil
No. 19698 (unreported on stipulation to judgment
by the parties after appeal taken);

McCormack v. City and County of San Francisco,
Division 2, District Court of Appeal,
1 Civil No. 19098; and

San Francisco Police Credit Union v. Breen,
No. 2632, determined by the Appellate Department
of the Superior Court.

SUMMARY OF APPELLATE CASES

<u>Municipal Department Served</u>		<u>Court</u>
Department of Public Works and City Planning Department	1	District Court of Appeal
Board of Permit Appeals	1	District Court of Appeal
Health Department, Police Department and Juvenile Probation Department	1	District Court of Appeal
Controller	1	Appellate Dept., Supreme Court
Municipal Railway	2	District Court of Appeal
Recreation and Park Department .	1	District Court of Appeal
Fire Department and Police Department	1	District Court of Appeal
Department of Public Works . . .	2	District Court of Appeal
San Francisco Unified School District	<u>1</u>	State Supreme Court
TOTAL	11	

PUBLIC UTILITIES DEPARTMENT

General

Under the supervision of the Public Utilities Counsel, a division of deputies in the City Attorney's office performs services for the Public Utilities Commission and for its departments, including the San Francisco International Airport, the Hetch Hetchy Water Supply and Utilities Engineering Bureau, the Bureau of Light, Heat and Power, the Water Department, and the Municipal Railway.

While a large portion of the time of the Public Utilities Counsel and the deputies assigned to public utilities work is closely involved with handling litigation and the large volume of preparatory work required in connection therewith, there are other activities equally important which are designed to assist in the prevention of litigation or other legal problems. Thus, litigation is often avoided by adherence to a policy of close consultation between the City Attorney's office and the departments involved, whereby transactions are considered and carried out with due regard for prevention of possible legal problems.

In view of current large-scale developments in the water and power field and in the expansion of the Airport, involving projects amounting to many millions of dollars and long-term commitments far into the foreseeable future, this policy of close consultation and of close coordination in legal and administrative planning is of very great importance. As will be hereinafter noted, the City Attorney's office is in close consultation with the Commission, its staff and appropriate departmental officials in such matters as the formulation and negotiation of long-term contracts for municipal water users, the San Antonio Dam development, the further development, including the power plant portion, of the Hetch Hetchy project, and the South Terminal Building construction and related improvements at the Airport. These are only some of the matters upon which this policy of continuing close consultation has been carried out.

The broad range of the City's utility activities has also resulted in recent years in augmenting the variety and scope of legal and administrative proceedings which this office must conduct to protect the legal interests of the City. Whereas, in past years, proceedings have been largely conducted via formal litigation in the state and federal courts, an increasingly larger share of the City's legal business is handled before administrative agencies, such as the Civil Aeronautics Board, the United States Department of the Interior - including the National Park Service and the Fish and Wildlife Service - the State Board of Equalization, the State Water Rights Board, the State Lands Commission, and, in certain instances, the State Public Utilities Commission.

Closely connected with this type of work are appearances

which this office makes in coordination with the City's legislative representatives, before Congress and the State Legislature and their various committees. Representatives of this office present the legal aspects of the official position of the City on the numerous legislative matters which may affect the operation of the City's various utilities or other interests of its citizens in utility matters affecting the City and County.

A. Airport

As reported last year, the most important item of Airport litigation now pending is that between the City and County of San Francisco and Western Airlines, Inc. The source of this controversy lies in the fact that between 1951 and 1957, Western paid, under protest, the sum of \$214,385.74, representing a disputed portion of rates and charges allocable to the difference between current rates and charges and the rates paid by United Air Lines under its 1940 and 1947 lease agreements. While a Federal court action for a subsequent period was settled in a prior fiscal year, Western, in this action, is now prosecuting its appeal from the Superior Court judgment in favor of the City and County of San Francisco, which held that Western was not entitled to recover any portion of the rates and charges which it had paid under protest for the 1951-1957 period. Said appeal is now pending in the District Court of Appeal, and the City has filed a brief setting forth the position of the Airport in relation to this controversy and answering assertions which were made by Western in its opening brief on appeal. After Western has filed its final brief, the matter will be set for argument in the District Court of Appeal at a later date this year.

Other litigation involving the Airport during the past year was an action in the matter of the City and County of San Francisco v. Flight Engineers International, which was brought by the City and County in San Mateo County Superior Court regarding certain picketing which it was then threatened would be carried out in violation of the rule of the Public Utilities Commission forbidding any form of demonstrating or picketing on Airport property without the permission of the Airport Manager. An order to show cause was issued in this matter, upon the issuance of which defendants stipulated to cease picketing pending the hearing of said order. Subsequently, in consultation with this office and according to a policy promulgated by Airport management, a formula was devised which restricted picketing to a few locations on the Airport which were approved by Airport management and which were satisfactory to the defendant in said action. For this reason, further prosecution of this case has become unnecessary.

During the past year other legal actions regarding the Airport which were processed by this office were two actions in eminent domain to acquire an additional 36.61 acres of real property for Airport expansion. Said actions were settled on payment

by the City of a sum deemed to be fair compensation for the parcels involved.

The City also defended an eminent domain action brought by the State of California to acquire a small parcel of Airport property for freeway purposes, and a similar action brought by the City of Millbrae to acquire another small parcel for the construction of public buildings. The first action has been finally determined, and the second action will shortly be terminated by reason of agreement of the parties on the fair market value of the property in question. Another eminent domain action by the City of Millbrae to determine an easement over Airport land is now awaiting trial.

This office also participated in the defense of eight personal injury actions brought by reason of alleged injuries occurring on Airport property, and is prosecuting a pending action against a trucking firm for damage to an Airport concourse.

A most important series of legal proceedings this year, as in past years, are administrative matters brought before the Civil Aeronautics Board and its examiners regarding the determination and selection of the various airline routes. This office has continued its representation of the City and County in such proceedings pursuant to the consistent policy of the Public Utilities Commission to maintain and develop adequate passenger and freight air service through the San Francisco International Airport during this very rapidly expanding jet age. The most important proceedings before the Civil Aeronautics Board are briefly described:

1. San Francisco-New York Nonstop Case

This matter has culminated in litigation pursuant to which further administrative proceedings are currently being conducted. As previously reported, on May 19, 1960, the United States Court of Appeals for the District of Columbia issued its order returning the administrative proceedings to the Civil Aeronautics Board to hold a hearing to determine whether the Board's rules and practices were so violated as to justify setting aside the prior determination of the Board whereby American Airlines was granted a right to fly nonstop on its route between San Francisco and New York.

Pursuant to the Court order, hearings began in Washington, D. C., on July 6, 1960, and were continued in New York, San Francisco, and Washington, D. C., concluding on September 27, 1960, and encompassing over 2265 pages of testimony on the issue as to whether communications to the Board were of such a nature as to constitute a violation justifying vacation of its order.

This office participated in full briefing of the issues before the Board Examiner in support of its position that there is

no cause to vacate the prior order of the Board. The decision of the Examiner was rendered on February 20, 1961, to the effect that no party had violated the Board's procedural regulations, and while certain violations of the Board's Principles of Practice by American Airlines and San Francisco were found to take place, said violations were not prejudicial and did not constitute cause for vacation of the prior order of the Board authorizing the American Airlines New York nonstop service. The Examiner also recommended that the proceedings before the United States Circuit Court should be dismissed.

On exceptions by the parties to the decision of the Examiner, the issue was again fully briefed before the Civil Aeronautics Board and was orally argued before the Board in Washington, D. C., on May 10, 1961. Further proceedings now await a decision by the full Board, whereupon its action will be reported back to the United States Circuit Court of Appeals for such additional proceedings as that Court may deem appropriate.

2. Southern Transcontinental Service Case

During the past year this matter was concluded, with results beneficial to the City and County of San Francisco.

The case involved determination of basic policy regarding air travel from San Francisco to Miami throughout the southern tier of states. The hearing examiner had recommended to the Board that service be established by two additional carriers between San Francisco and various southern states. This office filed certain exceptions to the decision of the examiner, followed by briefs thereon before the Board. The matter was orally argued and on March 13, 1961, the Board rendered its decision awarding National Airlines a route from San Francisco to Miami and the intermediate points Las Vegas, Houston, New Orleans, St. Petersburg-Clearwater. Delta Airlines was awarded a route from San Francisco to Dallas via Las Vegas and beyond to New Orleans - Atlanta - Miami. Through the award San Francisco gained two new carriers and two new trans-continental routes in the Southern area of the United States.

However, the final effectiveness of the Board's order was stayed on June 9, 1961, pending determination of the limited question of whether the two carriers would be required to serve both San Francisco and Oakland, or whether they would be entitled to select their respective terminals of operation. San Francisco has filed its brief urging adoption of the latter position.

It should be noted that National Airlines has already instituted service pursuant to the permission secured in this proceeding.

3. Trans-Pacific Route Case

This case was originally filed pursuant to the direction

of President Eisenhower, and involved a detailed examination of the adequacy of air service by American carriers throughout the entire Pacific area. Extensive hearings were had regarding the establishment of additional air routes from various cities in the United States over the Great Circle Route and the Central Pacific Route to the Far East and Oceania and to Hawaii.

On July 25, 1960, the Board's hearing examiner issued a recommended decision to the effect that Northwest Airlines and Pan American World Airways be given competitive routes between Coast cities including San Francisco over the Great Circle Route to Tokyo, and that Northwest Airlines have a Central Pacific Route from San Francisco-Los Angeles via Honolulu to Tokyo and intermediate points.

It was also recommended that Hawaiian Airlines be certificated from San Francisco-Los Angeles to Honolulu and that South Pacific Airlines be certificated between San Francisco-Los Angeles to the Fiji Islands via Honolulu and Tahiti. Another recommendation was that Flying Tiger Airlines be given unlimited cargo rights in the Pacific Area.

After exceptions to the examiner's decision, briefs were filed with the Board. Oral argument was had, and on December 7, 1960, the Board confirmed the examiner's recommendation, with the exceptions that Western Airlines was substituted for Hawaiian Airlines, that the Flying Tiger authorization was eliminated, and that South Pacific's route was not extended to the mainland. However, on January 18, 1961, President Eisenhower disapproved most of the important parts of the decision of the Civil Aeronautics Board. But, due to the fact that Hawaii is now a state, the award to Western Airlines of the right to conduct service to Hawaii is still in existence subject to said order of the Board. Petitions for reconsideration have been filed, but have not yet been acted upon by the President or by the Board.

4. Pacific Southwest Local Service Case

In this matter, in which the City is seeking additional unrestricted competitive service to Las Vegas and San Diego, and an additional carrier to Los Angeles, on February 6, 1961, the hearing examiner issued recommendations favoring San Francisco's position. Subsequently briefs were submitted and oral argument conducted before the Board. The matter is now awaiting decision.

5. Oakland Adequacy Case

On May 2, 1961, the Port of Oakland, the City of Oakland and the Oakland Chamber of Commerce filed a compliant and petition with the Board requesting an investigation and alleging the receipt of inadequate service from scheduled air carriers. Oakland claimed to be entitled to one third of all scheduled flights to and

from the San Francisco Bay Area. San Francisco, on June 13, 1961, filed a petition to intervene, and the carriers involved have moved to strike Oakland's complaint and petition. The matter is currently awaiting disposition by the Board.

6. Miscellaneous

Proceedings are also pending in regard to the Detroit Nonstop Case; a case involving service from Spokane to California, and from Calgary to California; the Minneapolis-St. Paul Service Case; and the Guatemala Renewal Service Case. Also, the office has been carefully observing the progress of the Rick Helicopter Application.

These miscellaneous matters await further proceedings by the airline applicants and by the Board.

In the field of unlitigated matters, this office performed numerous services for the Airport, consisting of the conduct of the legal aspects of negotiations, the approval of leases and contracts, insurance policies and bonds, and consultations and numerous administrative procedures involving legal aspects of the administration of the 300 or more agreements which the City and County has with Airport tenants and concessionaires.

Among the most important of these matters was the successful termination of a lease negotiation with Pan American World Airways. Culminating seven years of negotiation, the City and County and Pan American, after numerous legal conferences, reached agreement whereby Pan American released to the City and County 35.17 acres of its maintenance base area and 50 acres comprising Plot 1. Pan American became the successful bidder for a new lease of Plot 1, and has entered into an agreement with the City that it will release to the City the balance of its lease acreage, an additional 42.02 acres, upon completion of the construction of its new maintenance base area before December 1, 1963. This transaction was carried out by an agreement and an escrow arrangement through this office pursuant to the approval of the Public Utilities Commission and the Board of Supervisors.

Another important legal problem worked up by this office over the past year was the establishment of the heliport at the Ferry Building, San Francisco. The heliport went into operation on June 1, 1961, upon which date San Francisco & Oakland Helicopter Airlines, Inc., commenced operations. To enable this operation to begin, City and the Port Authority entered into a lease, and thereupon the City entered into an agreement with the helicopter service, constituting a fixed base operation. A permit was then negotiated for the use of the heliport for the regular schedule of operations in the Bay Area of the helicopter service. This office participated in the various legal aspects of these negotiations.

Other work undertaken for the Airport in the course of the past year included preparation of a supplemental agreement with the Hilton Hotel; preparation of an oil company lease; concluding an air cargo building lease with the Post Office; a fuel storage lease; two ticket counter leases; a gas station lease; an amended fixed base operator's agreement; and another land lease to an airline. In addition, drafts were also prepared of other lease documents for future negotiations.

A further important legal assignment carried out in connection with the Airport was a continuing review of legal authorities dealing with the problem of sound and vibration arising in connection with jet aircraft operations. This office was consulted upon the subject of negotiations with the City of Millbrae for the construction of a jet noise barrier for the mutual benefit of both communities.

In the past year, research was done for the Airport in answer to questions raised regarding landing rates and charges for small planes; the establishment of regulations for the removal of disabled aircraft; the performance of various services in ramp areas by the concessionaires of airlines; the rights of commercial vehicles to park in the parking area outside the Terminal Building; the storage and distribution of auto fuel on the Airport; and the question of water pollution in regard to Airport activities by the airlines.

An opinion was prepared and issued determining the extent to which the City could regulate various auxiliary types of ground transportation operations in its status as proprietor of the Airport.

The institution of City and County of San Francisco v. Greyhound Rent-A-Car, Inc., in the San Francisco Superior Court, was based on the fact that on June 1, 1958, the City and Greyhound Rent-A-Car, Inc. had executed a non-exclusive concession agreement granting Greyhound the right to conduct a U-Drive Concession at the Airport for a period of one year, whereby Greyhound undertook to pay a yearly sum. Greyhound breached its contract and discontinued said service prior to December 15, 1958. City sued for \$15,000, for unpaid monthly payments from January to May, 1959. This past year the case was settled on the payment of the sum of \$10,000 by Greyhound to the City and County.

B. Hetch Hetchy Water Supply, Power
and Utilities Engineering Bureau

One of the most important matters undertaken in the last year concerned administrative proceedings and ensuing litigation regarding ad valorem tax assessments by Tuolumne County of water rights owned by the City and County in connection with its

Hetch Hetchy operations in Tuolumne County. Last year Tuolumne County stepped up its assessment of water rights for 1960-1961 from \$500,000 to \$6,062,100. Intertwined questions concerning the legality of ad valorem taxation of municipally-owned appropriative water rights and the determination of water rights values were presented in full scale hearings before the State Board of Equalization in Sacramento for administrative adjudication.

The State Board ordered the assessment reduced to \$1,214,000, and Tuolumne County sought further review by mandamus in the Superior Court of Tuolumne County. In said Court, the Board of Equalization decision was affirmed by Yuba County Judge Warren Steel, specially assigned to hear the matter.

Appeal has now been taken by both Tuolumne County and San Francisco, and the case has been assigned to the Third District Court of Appeal. In the interim, San Francisco has also brought suit in the Superior Court for refund of taxes in the amount of \$330,852.10 against Tuolumne County.

For the current tax year, assessed values for water rights have been pegged at \$9,819,000 by the taxing county, which would require a tax payment of approximately \$525,000 for 1961-1962. The valuation question will be presented again to the State Board of Equalization in August, a petition of protest having been already filed by this office. Preparations have been made as of the close of this year for said presentation, including gathering of documentary evidence, conferences with witnesses, and formulation of briefs and statements. The said hearing was scheduled for August 21, 1961.

After the close of the present fiscal year a hearing was held before the Board of Equalization and the Board issued its decision that certain water rights were exempt from taxation and that certain other assessments should be reduced. The decision ordered that the total tax assessment of the City and County in Tuolumne County be reduced from \$9,819,000 to \$2,345,000, a reduction of approximately 75%.

Another matter of the highest importance which was resolved within the course of the past year was the proceeding in the Department of the Interior to obtain a permit for the change of location for the construction of the Canyon Power Project. Objections were filed, and a hearing was conducted by the Department of the Interior to gather facts in regard to the diligence of the City and County in pursuing development of the Hetch Hetchy Project under the Raker Act. This hearing was called by the Secretary of the Interior following an application made by the City and County for a change of location of the right-of-way previously granted in the Yosemite National Park and Stanislaus National Forest. Inasmuch as the entire question of the continuance of the Hetch Hetchy Project was presented, extensive preparations were made in review-

ing and gathering documents, interviewing witnesses and in preparing a full set of briefs and statements. A hearing was conducted in San Francisco for three days before a hearing officer of the Department of the Interior, and during said hearing a minutely detailed chronology of City's development of the Hetch Hetchy Project was presented and made a part of the record. At the conclusion of the hearing, this office prepared findings of fact and presented same to the hearing officer. These were adopted almost completely and a favorable decision was recommended by the hearing officer. Early in 1961 the Secretary of the Interior arrived at a favorable decision confirming the report of the hearing officer and permitting the City and County to proceed with the Canyon Power Project, and the ultimate completion of the Hetch Hetchy Project. This represents a most important stage in the ultimate protection of the City's legal rights in connection with this vital development.

Another action being prosecuted by this office for this Department is one in which the City and County sued for damages and breach of warranty, alleging that the defendants had supplied a defective cable for a City contract, and had negligently installed the same. This action, the prayer of which is \$4,331.14, has not yet been set for trial. Two actions for damage arising out of tunnel construction were settled. Three eminent domain actions were also prepared and processed.

A great volume of work of a non-litigated nature was also carried out for this department. Some of the most important phases of this work consisted of the participation in conferences regarding the drafting of a proposed "Fourth Agreement" between the City and County, on the one hand, and the Turlock and Modesto Irrigation Districts, on the other. As of the close of the year, several drafts of the agreement had been prepared and exchanged with the other parties. The purpose of this agreement is to insure the continuance of the close cooperation which has existed in the past between the City and the Irrigation Districts regarding coordination of the water and power operation on the Tuolumne River and its tributaries. The agreement will spell out the extent of the City's participation in the new Don Pedro Dam construction, as a result of which City will obtain 570,000 acre feet of exchange storage space, and partial use, depending on flood control requirements, of an additional 170,000 acre feet of storage space. San Francisco will receive the benefit of being free of any obligation to store water for the account of the District in the O'Shaughnessy, Cherry Valley or Lake Eleanor Reservoirs. City will thus be enabled to engage in a more economical operation of its water and power system on the successful conclusion of these negotiations.

Also, in this connection, in the course of this past year, this office consulted on the negotiations for an agreement with the Districts regulating the withholding of water by the City and County whereby it will be able to conduct power operations by

the use of water which otherwise would have had to be delivered downstream to the Districts. A draft of this agreement has been prepared and submitted to the Districts at the close of the fiscal year.

Also, in the same field, an agreement was prepared and entered into between the City and County and the Modesto Irrigation District, whereby City and the District exchanged certain circuit breaker, switch and meter towers which will make possible facilities of increased capacity at the delivery points of City's power to the District, to allow for an increased generating capacity of the new Cherry Power Plant.

Another agreement drafted for this department provided for the use of expert services and patented equipment for testing insulation on high voltage circuits.

Many other matters were also handled for the department, including contracts for expert professional assistance in such fields as traffic surveys, test borings and general Airport consulting. A professional services contract was also prepared for the employment of a consultant on power transmission operations in connection with the Hetch Hetchy Project.

Also, in the course of the past year, an important new category of services has been initiated in connection with the purchases by the City and County of electrical equipment which, it was subsequently disclosed, was purchased from companies which have been indicted and convicted by the Federal Government for anti-trust violations for sales of equipment similar to that purchased by the City. Legal research has been conducted and consultation held with the Department so as to investigate and obtain needed information for the protection of the legal rights of the City and County.

A common use agreement with the Pacific Gas and Electric Company relating to the Warnerville Substation was also prepared on the request of the Department.

Research has also been conducted on the question of unavoidable delays in the performance of contracts, and the Department was advised on this subject matter; and, in addition, many routine documents were also prepared or reviewed in connection with departmental operations. Extensive review of pending legislation was also conducted; same will be further discussed in connection with the Water Department.

C. Bureau of Light, Heat and Power

An action brought by a contractor for money alleged to be wrongfully withheld under a contract for the maintenance and repair of the City-owned street lighting system was tried and has been submitted for decision.

Further damage claims in regard to the activities of the Bureau have been submitted to this office, for review and recommendations for their disposal have been made by the office. Contracts and other legal documents have also been reviewed in connection with Bureau operations.

D. Water Department

An important category of litigation over the past year concerned certain actions involving contracts with the Spring Valley Water Company, which contracts had by their terms required that Company to furnish water at fixed rates and charges and which contracts were turned over by Spring Valley to the City and County. At the beginning of the year, ten cases were pending in which the City and County challenged the validity of such contracts on the basis that the rates and charges fixed thereby had been subjected to rate regulation by the San Francisco Public Utilities Commission, and that current rates and charges were now applicable. In the course of the past year two of such actions - brought by the City and County against California Water Service Company and against the Town of Hillsborough - were tried before the Marin County Superior Court. In this connection, briefs were prepared and the cases were orally argued. On May 25, 1961, that Court entered its judgment to the effect that the City and County was bound to furnish certain water free of charge to California Water Service Company and certain other water at five cents per thousand gallons jointly to said Company and the Town of Hillsborough. The basis for this decision was that said contract rights were obtained in connection with a reservation of water rights in which the original grantors to the Spring Valley Water Works had reserved vested water rights before there had been any dedication of said water to public use for utility purposes.

In the case of another purported contract right, also held jointly by California Water Service Company and the Town of Hillsborough, to receive water at fifteen cents per thousand gallons, which had originally been given by Spring Valley in exchange for a pipeline right-of-way, the Superior Court found that the said water had been dedicated to public use prior to the granting of such contract right by the Spring Valley Water Works, and, hence, that the Public Utilities Commission had the power prospectively to impose current rates and charges on such contract water.

Both the City and County and the other parties appealed from several aspects of the Superior Court judgment, but at the conclusion of the fiscal year a settlement was negotiated in consultation with the Manager of Utilities and the Department, whereby the entire controversy would be compromised and the appeal dismissed. The proposed compromise involved settlement not only of this lawsuit but also of the thirty-one other related actions between the same parties.

Other litigation of a widely varied nature was handled by this office for the Water Department. One of the largest classes of litigation concerned alleged damages caused by claimed breaks in water mains in City's distribution system. During the course of the past year the last of the cases resulting from the major main break on July 4, 1957, at Seventh and Howard Streets, was settled with payment on an equal basis by the City and County and by codefendant Western Union Telegraph Company, according to the pattern set in the previously settled cases involving the same factual situation.

A total of nine cases involving alleged water main breaks were processed in the course of the past year. Two other cases of this type were also settled during the course of the year at a figure amounting to a minor portion of the total damages claimed. In one other matter City was paid a settlement by the defendant in that suit by reason of damage caused to City's water main.

Five other water main matters are pending, defense of which in each case involves extensive depositions and investigations to determine in each instance the precise reasons for the cause of any breaks which may have occurred.

Another important class of litigation processed by the City Attorney for the San Francisco Water Department is a large body of cases in eminent domain, both brought by the City to acquire additional lands and rights-of-way for Department purposes, and by other entities seeking to use Water Department properties and rights-of-way for other public purposes.

One of the most important matters last year involved acquisition by the City of a 20.6-acre parcel of property near Woodside, in San Mateo County, which was acquired for watershed protection purposes. Whereas the property owner had sought \$188,000 in damages by reason of the taking, the City and County settled this matter during trial on payment by it of \$70,000. A total of twenty-six matters in eminent domain were processed by this office during the past year. Many of these matters require extensive interviews with appraisers and negotiations in order to make certain that a fair price was or will be either paid by the City or obtained by it, as representing the value of the property rights which are acquired by or from the City.

Another class of litigation handled by this office is that of general tort litigation brought due to alleged damages caused by departmental activities. Twelve such matters were processed over the course of the past year, most of which involved alleged personal injuries. One of these matters was settled for the City and County on a payment of \$250, on a prayer by plaintiff for \$5,000. Preparations were made for the trial of the other matters, including discovery proceedings, to ascertain the facts in each such case.

Other actions involved the defense of the Department in an injunction suit brought by reason of a dispute regarding a Department billing to a householder, in which action the Superior Court denied the property owner a preliminary injunction. The matter is still pending on the merits.

Furthermore, a group of fifty-eight actions, with a total prayer of \$9,652.88, which had been brought by the City against one defendant for damage to Water Department facilities in the course of contract work, was settled on the payment to the City of the lump sum of \$6,081.31.

Another action being processed by this office is one which was brought on behalf of the City against a land developer in San Mateo County for causing the silting over of a City pipeline. Several preliminary matters were conducted in regard to this litigation.

In the field of administrative adjudication, the State Water Rights Board during the past fiscal year gave its final decision on a protest by Alameda County Water District against City's application for a permit to appropriate certain waters of San Antonio Creek in connection with the San Antonio Dam Project. The Board decided in favor of City upon a presentation of briefs and oral testimony. Upon said decision, the District petitioned for reconsideration, whereupon, after a further brief filed by City, the Board denied the District's petition.

Other matters pending before the State Water Rights Board involved an application by a county flood control and water conservation district to divert certain waters in Alameda County for underground percolation. Conditions are being negotiated for the diversion.

Further, a private corporation filed an application for appropriation in which this office, in consultation with the Water Department, formulated conditions which were accepted by the applicant.

Also, in this connection, permits regarding construction of a reservoir by other water districts were reviewed in regard to stream gauge requirements.

This office dealt with many matters of a non-litigated nature of importance to this Department. The office drafted numerous leases regarding the use of Water Department properties according to terms and conditions required by the Department. Thus, leases were prepared in relation to a proposed lease of Water Department properties for a golf course, for public parking (two leases), for the growing of strawberries (two leases), for grazing and ~~shae~~ cropping, for privately financed housing for senior citizens, and for picnic grounds and recreation areas (two leases).

Another category of work has been the drafting and review, in consultation with the Water Department, of the water users' agreements for public agencies which the City and County has entered with most of the municipal agencies to which it sells water for resale purposes in San Mateo, Alameda and Santa Clara Counties. During the course of the past year this office attended numerous conferences for the negotiation of such agreements, drafted exhibits and special provisions for the same, and attended meetings of the Bay Area Water Users Association. Furthermore, this office has advised the Commission regarding legal aspects of water uses in relation to the new form of agreement. As a result of this agreement, standard conditions for the rendition of water service have been promulgated between San Francisco and City's resale water users.

An important set of negotiations was concluded this past year, whereby a past dispute with the City of Pleasanton was settled in a manner to the mutual benefit of both parties. In this settlement, Pleasanton agreed to pay to the City and County \$36,000, on a disputed water bill of \$46,000, and San Francisco transferred to Pleasanton, pursuant to a Charter amendment which was drafted by this office, water export rights, a tract containing well sites, and appurtenant equipment, in consideration of an additional payment of \$40,000 and assumption of certain obligations by Pleasanton. This agreement was consummated on the passage by the voters of the Charter amendment. Currently, this office is also participating in negotiations with Pleasanton regarding the development of a proposed industrial park on 600 acres of adjacent City lands.

This office also participated in numerous other negotiations regarding the legal aspect of Water Department transactions, and also approved contracts, leases, bonds, insurance policies and title documents required for the consummation of such transactions. Thus, resolutions and other documents were prepared and reviewed in connection with the Hetch Hetchy and Water Department proposed \$115,000,000 bond issue. A proposed contract for the retention of a firm for design of San Antonio Dam was also negotiated and drafted by this office, in consultation with the Water Department.

Another important category of work which was undertaken for the Water Department, as it is for every utility department, is the continuing examination of Federal and State legislation to determine its legal effect on utility operations. Thus, twenty Congressional bills were reviewed and specific recommendations were made on five of them. With respect to state legislation, 295 bills were reviewed, summarized in writing, and a recommended position for action or non-action was prepared. This office was represented each week at a staff conference, with members of both the Hetch Hetchy and Water Departments in order to arrive at a joint recommendation. Joint memorandums were then prepared reflecting the views of the City Attorney and Manager of Utilities, for transmittal to the Mayor's state legislative committee, preliminary to

obtaining an official City position on such measures. Also, interim legislative meetings were attended, among others, several in regard to the subject of implementation of the California Water Plan.

In connection with the Water Department as in the case of the other departments under the Commission, this office also performs the service of reviewing all claims for damages submitted in regard to the activities of the Department and makes its recommendations in regard to the processing, settlement or litigation of such claims.

E. Municipal Railway

In regard to the appeal in Blum v. City and County of San Francisco, reported in the last fiscal year, whereby a contractor seeks to recover interest on a previously withheld payment on a contract for track removal on Washington and Steiner Streets, this office prepared and filed a brief defending the favorable judgment City had obtained on this point in the Superior Court. The matter has now been briefed and prepared for argument before the District Court of Appeal.

Other legal work undertaken for the Municipal Railway, aside from the tort litigation which is covered elsewhere in this annual report, consisted of the following:

The preparation of an opinion relating to premium holiday pay for platform employees; an opinion regarding the legality of free passes on the Municipal Railway; permits for the installation of vending machines at car houses; matters regarding rates and fares, particularly in regard to the use of school tickets; preparation of a new agreement with the State Toll Bridge Authority relative to the use of street car and motor coach lines at the East Bay Terminal; a revised contract with the San Francisco Unified School District for the transportation of pupils; and a joint working agreement, which was proposed but not executed, with Daly City for removal of street railway tracks.

This office also participated in the revision of the lease whereby the Railway rents much of its bus equipment.

This office also drafted an ordinance whereby a revised form of change fund would be set up allowing the withholding of moneys which might become due to City, and provided forms for the carrying out of said ordinance.

F. Public Utilities Commission

As in the past, this office performed the services, through its Public Utilities Counsel, of regularly attending Commission meetings so as to be able to render current legal advice as requested by the Commission. It should also be noted

that this office prepares or reviews the form of Public Utilities Commission resolutions and consults with the Manager of Utilities and other staff members of the Commission regarding the legal aspects of Commission operations and the subjects of Commission action, and renders formal and letter opinions in this connection.

This office also participates as a legal adviser in the disciplinary proceedings which are conducted by the Manager of Utilities. It consults on documents and evidence adduced in connection with such hearings to make sure that the legal rights of both the City and County and of its employees are carefully and fully protected.

PUBLIC WELFARE DEPARTMENT

During the fiscal year 1960-1961, 94 cases involving a responsible relative who refused to assume the obligation of contributing to the support of a recipient of Old Age Assistance were referred to the office of the City Attorney from the Public Welfare Department. This was a marked increase over the 42 referrals of responsible relatives during the 1958-59 fiscal year and the 58 referrals during the 1959-1960 fiscal year. An agreement in 67 of the 94 cases was obtained from the responsible relative to meet his liability without the necessity of filing suit. Additionally, in seven cases, the responsible relative's liability was terminated when, because of death or other reasons, the recipient's grant of aid was discontinued. Of the remaining 20 cases referred during the year, suit was filed against the responsible relative in three cases and negotiations were still pending as of June 30, 1961, in 17 cases. One of the court actions was concluded within the year with a judgment in favor of the City and County, leaving two court actions pending.

Court actions against two responsible relatives and 18 cases in which suit had not yet been filed were pending from previous years at the beginning of the fiscal year. During the fiscal year judgment in favor of the City and County was rendered in the two court actions and 17 of the pending cases were successfully disposed of without suit, leaving one case still under negotiation at the end of the year.

During the fiscal year, 171 cases were referred to the office of the City Attorney due to the refusal of a responsible relative to submit a statement concerning his financial status so that the Board of Supervisors could determine the extent of the relative's monetary liability, if any, for the support of the recipient of aid. The close of the fiscal year showed 150 of these referrals had been terminated to the satisfaction of the Public Welfare Department, leaving 21 cases pending. Twenty-two such matters were pending at the beginning of the fiscal year, and all but one of these were concluded during the year.

Throughout the fiscal year assistance was rendered to the Collections Division of the Public Welfare Department by the office of the City Attorney in matters involving claims for reimbursement of aid granted totaling over \$14,000.00.

REDEVELOPMENT AGENCY

Legal problems of the Redevelopment Agency during the past year have required considerable time of the deputies in my office. In addition to the three deputies assigned to the work of redevelopment, other deputies in the office have been required to assist in the work.

Two condemnation suits were filed during 1960 embracing The Embarcadero-Lower Market Redevelopment Project Area E-1 involving 141 parcels of land and 632 defendants. All parcels have been acquired or are being concluded by settlement except approximately 15 parcels which are presently in the process of acquisition.

The acquisition of 608 parcels of land in Diamond Heights Approved Redevelopment Project Area B-1 has been completed. Actions to quiet title and McEnerney actions respecting properties in the area are presently being concluded.

665 parcels of land in Western Addition Approved Redevelopment Project Area A-1 have all been acquired except one which is on appeal. Actions to quiet title and McEnerney actions involving this project are presently being concluded. In my last annual report I reported that an appeal would probably be taken in the case of Redevelopment Agency v. Manwell. Such an appeal has been taken and the judgment of the trial court reversed. In the Manwell case a fire occurred damaging the improvements on the property after the filing of the suit and the issuance of the summons, but before the Redevelopment Agency had acquired title or taken possession of the property. The trial court ruled that the value of the property was to be determined on the date of issuance of the summons and that the jury could not take into consideration the damage that was done to the property by the fire in assessing damages. The District Court of Appeal reversed the trial court holding that the risk of loss of the property which is the subject of a proceeding in Eminent Domain remains with the owner until either title or possession is taken by the condemnor, and destruction of a material part of the property, whether by fire or vandalism, should be considered by the jury in diminution of the award. The owners of the property have petitioned the District Court of Appeal for rehearing in the matter, which I have opposed.

In the case of Redevelopment Agency v. Panelli, involving property in The Embarcadero-Lower Market Redevelopment Project Area E-1, a similar problem was presented to that determined in the Manwell case. A fire occurred damaging the property after the filing of the suit and the issuance of the summons, but before the Agency had acquired title or possession of the property. In the Panelli case the Superior Court judge who heard the case without a jury held that the risk of loss was on the owner until title or

possession had passed to the Agency. His determination of the law was just opposite to that of the trial court in the Manwell case. While the owners of the property have appealed the case to the District Court of Appeal, the ultimate determination in the Manwell case will undoubtedly be controlling.

FRANCHISE MATTERS

A. Litigation - The Pacific Telephone and Telegraph Company

In the franchise litigation with The Pacific Telephone and Telegraph Company reported in the prior fiscal year, the City and County prosecuted its appeal from the Superior Court judgment which had declared that that Company possessed a state franchise for the construction and maintenance of telephone lines in streets and other public places in San Francisco and was not required to obtain a local franchise. This office prepared and filed its opening and closing briefs on appeal completely setting forth City's legal position that a local franchise is required and reviewed in detail the franchise history and Company's use of public streets in San Francisco.

In regard to other actions pending between the City and County and the Telephone Company, discovery proceedings were conducted by both sides regarding the asserted liabilities claimed by Company and the unpaid franchise payments owed by Company to the City and County.

B. Litigation - Pacific Gas and Electric Company

This past year preparatory work was done by this office in connection with litigation filed by the Pacific Gas and Electric Company to recover moneys paid out by it for the relocation of its gas and electric facilities in connection with the construction of the Civic Center Exhibit Hall. The prayer in said action as adjusted in pre-trial proceedings is \$79,719.17. This past year Pacific Gas and Electric Company filed a second action against the City and County and other parties by reason of electric relocations required by the construction of the Civic Center Plaza Garage, with a prayer of \$42,165.43.

Both of these actions involve questions of the obligations of the Company under its franchise and general law to relocate its utility facilities for the construction of public improvements. Depositions and discovery proceedings have been reviewed and at the conclusion of the fiscal year a tentative settlement of these controversies had been worked out with the Company and was prepared for presentation to the departments concerned and to the Board of Supervisors.

C. Other Matters

In the course of the past year, a permit was drafted

containing terms and conditions for the use of fire alarm boxes and other Fire Department facilities by the Pacific Fire Extinguisher Company. Said permit has been approved by the Board of Supervisors.

Further, negotiations have taken place on a proposed form of franchise for the operation of a television antenna booster company within the City and County. A form of franchise has been prepared.

An opinion was also prepared and issued regarding the franchise obligations of a fire alarm company interconnected with the City fire alarm system, defining the formula for compensation provided under the franchise.

WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California with the City Attorney's office representing the City and County of San Francisco and the San Francisco City and County Employees' Retirement System in hearings and other workmen's compensation matters before the Industrial Accident Commission of the State of California.

The hearings generally fall into three categories:

1. Where the City denies liability for the alleged injury or denies that the injury occurred; or
2. Where the City contests that disability resulted from the alleged injury; or
3. Where the City contests the duration of the disability or amount of permanent disability alleged.

The City Attorney has appeared at 99 hearings, averaging 8.2 per month, in which testimony was taken or evidence presented on behalf of the City and the Retirement System. The hearings varied in length from one-half hour to three hours, averaging generally about one hour.

Matters which are decided by the Industrial Accident Commission are subject to Petitions for Reconsideration and to review before the District Court of Appeal. The City Attorney's office has filed five Petitions for Reconsideration and six answers to said petitions filed by the respective claimants, and one Writ of Review was filed in the District Court of Appeal. All of the necessary legal papers and documents in connection with the hearings, petitions, answers and writs are prepared in this office.

The City Attorney also represents the City and the Retirement System in the matter of subrogation of the claims of the Retirement System against a third party who has wrongfully caused injury to a City employee. In this way the Retirement System is often able to obtain reimbursement for the amount of compensation paid and medical expenses expended for the benefit of the employee as the result of his injury during the course and scope of his employment.

Where the injured City employee does not file suit on his own behalf, the City has the right to file an action against the third party causing injury. In the past year, we have filed one suit and have five suits previously commenced pending. Additionally, our office obtained reimbursement by way of settlement without litigation in six other matters.

Where the injured City employee commences an action in his own behalf against the third party causing his injury, the City has the right to intervene in order that the benefits paid to the City employee because of his injury may be recovered. During the past year one such suit, previously commenced, was settled.

On many occasions a lien has been successfully employed to obtain reimbursement, for and on behalf of the City and the Retirement System where the City employee has filed suit and the City has not intervened.

TAX AND RATE DEPARTMENT

A. GENERAL

Many issues required extensive participation before regulatory bodies, such as the California Public Utilities Commission and the Federal Power Commission, by the City Attorney on behalf of San Francisco ratepayers. As with taxes, every proposed increase in rates for utility services must receive thorough and impartial review in the public interest, and, if deemed excessive, must be vigorously contested by this office.

The past year found the City Attorney actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of ratepayers concerning virtually every type of regulated service--gas, electricity, telephone, transportation.

Vigilant attention and consistent concern have ever been focused upon charges for utility services by this office, leading this year to invitation to participate upon the panel of the Governor's Natural Gas Conference as a representative of consumer interests. Held in Los Angeles, the conference reflected points of view of the gas industry and regulatory agencies, as well as those of ultimate users of the resource.

California receives approximately 75% of its natural gas requirements from out-of-state sources, and the cost of such gas has increased at an average annual rate of eight per cent since 1950. Causes for this recent upward trend were explored at the conference, and it was pointed out that consumer representatives must increase their participation before the Federal Power Commission in Washington, D.C., where field prices are established. Once set, gas prices can only be paid by California distributors and passed on to California consumers.

B. GAS

Pacific Gas and Electric Company last year filed Application No. 42225, requesting an annual increase in gas rates of \$26,615,000. The amount of \$9,700,000 of such request was made necessary by reason of increased charges for gas levied by El Paso Natural Gas Company by the mere filing of revised tariffs by that company with the Federal Power Commission. Pacific Gas and Electric Company was asking an offset of its higher purchase price for natural gas, as to that portion of additional revenues for which they applied.

San Francisco opposed, however, the company's plan to charge residential and other so-called firm customers the great bulk of the offset amount, and the offset amount was evenly spread among all classes of customers by the California Public Utilities Commission in its August, 1960, decision.

Three additional months were utilized in the preparation and presentation of evidence on the general rate case. San Francisco's Chief Valuation and Rate Engineer testified on rate of return in opposition to utility witnesses contending for a 6.8% return. Final decision in the case found the California Commission within five one hundredths of one per cent of the rate considered reasonable by the San Francisco witness.

The amount realized by Pacific Gas and Electric Company was \$4,819,000, or 37%, of the \$13,004,000 requested by the initial application. San Francisco's brief in this proceeding was joined in and endorsed by the following governmental agencies: State of California; Counties of: Alameda, Kern, Marin, Merced; Cities of: Bakersfield, El Cerrito, Gonzales, Milpitas, Morgan Hill, Mountain View, Palo Alto, Redwood City, Sacramento, Santa Clara, Sunnyvale.

This office also filed applications for intervention in two important gas cases before the Federal Power Commission.

One, AR-61-1, is a proceeding that will determine the cost of natural gas to present and future producers who receive gas from wells in what is known as the Permian Basin. This case is important to San Francisco in that a majority of the natural gas supply requirements of the El Paso Natural Gas Company originate in the Permian Basin area, and any increased cost of gas to El Paso would be passed on to the Pacific Gas and Electric Company and other California gas distributing companies. They, in turn, would pass the increase on to their customers, as did Pacific Gas and Electric Company in the case hereinabove discussed.

RP-60-3, also before the Federal Power Commission, is a consolidated hearing involving four rate increases now in effect pursuant to Section 4(e) of the Natural Gas Act.

These increases were initiated by El Paso and are applicable to the Pacific Gas and Electric Company, as well as other companies, and have also been passed on to utility customers. The aggregate amount of these increases totals some \$3,400,000 for San Francisco residents.

Here again, rate of return is a significant issue, El Paso asking for 9.5% on wellhead properties and 6.5% on other plant investment.

The Board of Supervisors last year passed Resolution No. 405-60, directing the City Attorney to appear before the Federal Power Commission on behalf of San Francisco consumers.

C. ELECTRIC

The Pacific Gas and Electric Company last applied for an electric rate increase in 1957, which became effective in 1958; since that time no increase in electric rates has taken place. However, the average use per customer has increased, and the average electric bill (domestic) in San Francisco for the calendar year 1960 was approximately \$4.78, for consumption of 157 kilowatt hours; for the year 1959, the average bill was \$4.52 for 127 kilowatt hours.

During the year it was announced that the Pacific Gas and Electric Company would soon start construction on a 325,000 kilowatt nuclear steam generating plant at Bodega Bay, fifty miles north of San Francisco.

The company also requested permission, and was granted authority by the California Public Utilities Commission, to issue 896,470 shares of common stock at a subscription price of \$71 per share.

D. TELEPHONE

No formal matters have come before the California Public Utilities Commission involving telephone rates, rules or regulations in which the City Attorney's office participated. Rates for telephone users in San Francisco have not changed since 1958.

The number of new telephones has increased 11,537 over last year, showing a decrease of 663 telephones of the previous year's increase of 12,200. Earnings continued at a high level, mitigating against the possibility of rate increases in the near future.

E. TRANSPORTATION

Each year this office participates with the Controller's office in preparing the annual taxicab report.

When compared to other major cities in the United States the report shows rates in San Francisco to be among the highest, due, in part, to the topography of the City and consequent heavier operating expenses.

At one time, San Francisco had the highest rates in the nation; today, four major cities (with over 250,000 population) and six medium-sized cities (with 50,000 to 250,000 population) have rates as high or higher than San Francisco.

F. PARTICULAR PROCEEDINGS

In hearings before the California Public Utilities Commission the City Attorney's office has participated in the following cases:

1. Application No. 42659 of Herman Strauss, to begin an airport limousine service between Treasure Island Naval Base and the Oakland-San Francisco International Airport. The service was to be one way between Treasure Island and San Francisco in order not to conflict with the City's contract with the Barrett Transportation Company which provides all of the outbound taxicab and limousine service. Service was authorized by Commission Decision No. 61619 dated March 7, 1961, and modified by Decision No. 61733 dated March 28, 1961.

2. Application No. 43141 of Leo Lomski, to operate a ferryboat service between Redwood City and Candlestick Park. The service would operate on days when there were ball games or other athletic events. By agreement with the Recreation and Park Department, Mr. Lomski was to build a pier and landing for the ferryboat service. Service was authorized by Commission Decision No. 61768 dated April 4, 1961.

3. Application No. 43099 of Pacific Airlines, Inc., for an increase in fares between San Francisco and other cities in California. The City of Oakland protested the fare structure of the airline because it favored San Francisco in excursion fares between the Bay Area and Eureka and Ventura. The low excursion fares were instituted by the airline to encourage more traffic on these two routes. This matter is now pending a decision.

4. Application No. 42253 of Pacific Southwest Airlines, for an increase in fares between San Francisco and Los Angeles and San Diego. The increase was applicable to service on Lockheed electra aircraft, and amounted approximately to a fifteen per cent increase on one-way fares. Increase granted in Decision No. 61102 dated November 22, 1960.

5. Application No. 42427 of Southern Pacific Company, to increase commute fares between San Francisco and San Jose. The increase sought averaged between seven and sixteen per cent of the monthly commute, and from 12.9 to 25 per cent for the 20-ride. Increase granted by Decision No. 61268 on December 28, 1960.

6. Application No. 40736 of Southern Pacific Company, to discontinue flagmen at the 16th and 17th and Harrison Streets intersections, and to replace them with automatic signals. This case was concluded in the spring after two years of study, terminating in agreement between the Southern Pacific and the City with respect to the type of signals to be installed, and the future operating and maintenance costs associated with the installation. Authorization was granted in Decision No. 62158 dated June 20, 1961.

7. Application No. 42686 of Southern Pacific Company, to discontinue the operation of passenger trains 77 and 78 between San Francisco and Pacific Grove. This application was consolidated with Case No. 6996--investigation on the Commission's own motion into the operation and adequacy of passenger service of Southern Pacific between Pacific Grove and San Francisco. Before the public hearings were held the Southern Pacific applied for, and received, permission to modify the services and schedules and timetables on an experimental basis. This was granted, and the order dismissing Application No. 42686 was issued by the Commission on February 7, 1961.

8. Case No. 7024, the Commission's investigation regarding constructive mileages and related rules of common carriers. The San Francisco Chamber of Commerce requested the moving of the base point at the intersection of Third and Fourth Streets to Ninth and Harrison Streets. Due to the change to be brought about by freeway construction, the moving of the base point in San Francisco would allow a reduction of two miles in the constructive mileage between San Francisco and San Jose to the south, and would not change any other constructive mileage distances to the north or east. This change would help in some measure to reduce the transportation costs for shippers and consignees of merchandise between the two cities, and would also provide most of the San Jose shippers of ICC exempt commodities with a choice of seaports for items destined to be shipped in interstate or foreign commerce by water. Hearings on this matter are still in progress.

G. TAXATION

Litigation has developed in several cases deserving of comment, in addition to the water rights assessment matter and telephone franchise proceeding reviewed elsewhere in this report.

Equalization proceedings before the Board of Supervisors last year included hearing and review of the assessment of \$1,452,250, placed upon the possessory interest in Candlestick Park held by the National Exhibition Company. The Board having sustained the Assessor's valuation, taxes were paid under protest by the Giants and suit for refund was instituted. The case is now before the court for decision.

A summary judgment granted to San Francisco is now before the District Court of Appeal in a case wherein a leasehold improvements assessment to the tenant of a building is being challenged by the taxpayer.

Taxes of \$5,994.69, paid on the motor yacht, Westlake II, were paid under protest and suit has been brought to secure a refund. It is alleged that the seagoing pleasure craft is owned by Westlake Corporation, a Liberian corporation, registered in Liberia, and hence exempt from California taxing jurisdiction.

Lastly, the way was prepared for conveyancing of lands in the Western Addition through the cancellation of taxes on properties therein located and acquired by the San Francisco Redevelopment Agency. The total assessed value of the affected parcels was \$3,373,885.

LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

Pursuant to the provisions of Section 26 of the Charter, the City Attorney is required to "give his advice or opinion in writing to any officer, board or commission of the city and county when requested." A great deal of the work of the office goes into the research, drafting and checking opinions requested by officers, boards and commissions. The practice in my office is to assign the request, when received, to a deputy to write a preliminary draft, which is then checked by a senior deputy for authority and conclusion. The draft then comes to me personally and requires my approval and editing before issuance. The opinion as finally released may appear as a relatively simple one since very few persons are aware of the large volume of notes that are compiled by the writer, reviewer and myself before the opinion is finalized. Many of these notes are not used in the actual writing of the opinion, but the law must be exhaustively researched before I can advise in writing an elected officer, a department head, board or commission to proceed to deal with the public or another political entity on the particular subject for which the opinion has been requested.

In the year covered by this report I have issued 98 opinions to various officers, boards and commissions of the City. These 98 opinions bring the cumulative total written by me since I became City Attorney on March 1, 1949, to 1,472.

As in previous years, the Board of Supervisors leads the list in number of opinions rendered. This is readily understandable since their work in the legislative field constantly raises legal problems which must be thoroughly studied by me and my advice given to them before the enactment of the pertinent legislation.

Because of the great activity in your office where you have served as Mayor during this same period, you have found it necessary to call upon me for seven written opinions in which I have advised you as to the legal consequences and obligations that were embodied in your requests.

The Civil Service Commission is the department that maintains the employer-employee relationship and has called me to advise them in ten instances. With the ever-increasing complexity of their responsibilities as to classification and reclassification of civil service positions, together with the compiling of data for salary standardization, they are continually confronted with new legal problems and the majority of the opinions written this year covered

this type of advice.

Departments such as Public Works and City Planning, which are so closely related to the huge building program going on in San Francisco, have called upon me to advise them on some dozen different legal points.

The remaining City departments, though not making as many requests as the ones specifically referred to above, have been confronted with legal problems and have come to me for advice which I have rendered them in written opinions in order that they might carry out their duties and obligations in accordance with the law.

I have set forth below the departments to which I have rendered opinions this year, noting after each department the total number of opinions written:

Board of Supervisors	29
Civil Service Commission	10
Mayor	7
Department of Public Works	6
Fire Department	5
City Planning Commission	5
Controller	3
Health Service System	3
Art Commission	3
Recreation and Park Department	3
Retirement System	3
Department of Public Health	3
Adult Probation	3
Chief Administrative Officer	2
Police Department	2
Director of Finance and Records	2
M. H. de Young Memorial Museum	1
Public Library	1
Agricultural Commissioner	1
Department of Public Welfare	1
Purchaser of Supplies	1
Adult Guidance	1
Housing Authority	1
Municipal Court	1
Grand Jury	1

CONTRACT PREPARATION AND APPROVAL

One of the duties with which I am charged under the Charter is the approval of all contracts to which the City and County is a party. All of the contracts executed by departments during this past year have either been written by me during the current year or drafted in previous years and brought up to date. I particularly wish to call your attention to the completion of the contract with the State of California relative to the rehabilitation

of the Palace of Fine Arts. This was a complicated contract due to the necessity of drawing this document in such a manner it did not violate either State statutes or local Charter law.

The continual expansion of the Department of Public Health in taking advantage of the Short-Doyle Act dealing with mental health has necessitated the drafting and executing of a number of contracts with hospitals in San Francisco which have out-patient mental health clinics.

The new emphasis upon the practical training of nurses in colleges has required extensive drafting of agreements whereby the practical experience required by them may be given to these nurses in the San Francisco General Hospital.

Many other important phases of government require the drafting and approval of contracts but space does not permit going into further detail.

LEGISLATIVE DEPARTMENT

This year witnessed a large number of changes in the various codes of the City. These changes particularly revolved around the up-dating of the fee schedule charged for various services rendered by City departments. I assisted the departments in drafting the necessary amendments and in answering the various legal questions which arose at the public hearings on these amendments.

The City Housing Code and the Building Code have been the subject of a number of hearings by committees of the Board of Supervisors and I have had a deputy in attendance at these meetings and have been reviewing the proposed changes.

This year the State Legislature met in regular session in Sacramento. A deputy from this office was in attendance at all sessions of the Legislature. The City, through its State Legislative Committee and the Board of Supervisors, took action on some 441 bills. This large number of bills required the constant attention not only of the deputy assigned in Sacramento but numerous other members of my staff. Many of the suggested amendments prepared and proposed by me were accepted by the authors of the bills in question and San Francisco's policy was generally carried out.

ABATEMENT MATTERS

July 1, 1960 - June 30, 1961

DEPARTMENT	Referrals during fiscal year	Actions filed in fiscal year	Cases Terminated in Fiscal Year			Method of Compliance			Cases Pending 6-30-61		
			No.	Liti-gated	Non-liti-gated	Demo-lition	Reha-bili-tation	Other	No.	Liti-gated	Non-liti-gated
Public Works	46	61	57	36	21	36	21	0	124	91	33
Public Health	16	16	14	11	3	7	6	1	39	27	12
TOTAL	62	77	71	47	24	43	27	1	163	118	45

URBAN RENEWAL--ABATEMENT AND CONDEMNATION OF PUBLIC NUISANCES

The vigorous enforcement of the San Francisco Building and Housing Codes during the past year is indicated by the fact that more than 1500 complaints were issued to owners of substandard buildings by the Public Works Department and the Public Health Department. Compared to the previous fiscal year, this represents an increase of over 150% in the number of complaints issued. As the Urban Renewal Program has gained momentum there has been a corresponding increase in the number of buildings rehabilitated or demolished.

The goals of the Urban Renewal Program can be achieved only by compliance with existing ordinances. The program carried on by this office has created a greater willingness on the part of property owners to comply with administrative orders that substandard buildings be rehabilitated or demolished. Evidence of the increasing acceptance of the Urban Renewal Program is seen in the fact that, despite the increase in complaints issued, voluntary compliance during the past year permitted an actual reduction in the number of condemnation orders issued and in the number of cases which had to be referred to the City Attorney for legal action.

However, with this increase in voluntary compliance with orders issued by the Director of Public Works and the Director of Public Health, there still remained, as in previous years, a large number of hard-core cases which had to be referred to the City Attorney for legal action.

As previously noted in these reports, hard-core abatement cases are among the most difficult, time consuming and vexatious matters referred to the City Attorney. In contested cases owners frequently engage in legal filibusters and delaying tactics dragging litigation out over many months. Even uncontested abatement cases frequently are delayed by the necessity of concluding probate proceedings, appointment of guardians, foreclosure proceedings, change of ownership, quiet title proceedings, etc., before compliance can be secured. Attempt is made in each case to pursue a course of action which will result in the successful termination of the case in a minimum time and at a minimum expense to the City.

During the past year the Department of Public Works and the Department of Public Health referred 62 abatement cases to the City Attorney for legal action. During this same period 77 superior court actions--an increase of 175% over the previous year--were filed against property owners for failure to comply with condemnation orders. During this same period 71 abatement cases were successfully terminated by this office. In 24 of these cases compliance was secured by negotiation with the owner or his attorney. These cases were terminated in a minimum time and at a minimum expense to the City. The disposition of the other 47 cases, an increase of 38% over the previous year, was such that compliance was

secured only after a superior court action had been filed against the owner. In total the 71 abatement cases terminated exceeded referrals during the past fiscal year by 14%. The vigorous enforcement program carried on by this office has contributed to the increasing effectiveness of the Urban Renewal Program.

The tabulation chart on page 38 shows the number of abatement matters that were successfully terminated by the City Attorney's office during the past fiscal year, whether such terminations were litigated or non-litigated, the method of compliance, the number of referrals from the various departments, the number of actions filed during the year, the number of cases pending as of the close of the fiscal year, and whether litigated or non-litigated.

PARKING AUTHORITY

The activities of the Parking Authority have continued to increase during the past fiscal year, resulting in a corresponding increase in the work load of this office for legal services rendered to the Authority.

The litigation involving the validity of the Portsmouth Square Garage was successfully concluded during this year. In the case of Best v. City and County of San Francisco, 184 A.C.A. 433, a taxpayer sought an injunction and a writ of mandate to prevent the execution of an agreement between the City and City of San Francisco Portsmouth Plaza Parking Corporation, a nonprofit corporation, for the construction of a garage beneath historic Portsmouth Square. The trial court rendered its decision in favor of the City upholding the legality of the project. The District Court of Appeal, on September 6, 1960, sustained the decision of the trial court and the Supreme Court denied plaintiff's petition for a hearing. The entire case, including the trial and appeal to the highest State Court, from the time of commencement of the action on February 14, 1960, until the final action by the Supreme Court on October 26, 1960, consumed less than nine months; believed to be a record for expeditiously disposing of litigation which might otherwise have seriously delayed the commencement of this most important public project. With the successful conclusion of this litigation the project was ready to proceed, and on November 7, 1960, the final formalities were concluded at bond closing ceremonies, and on November 19, 1960, the first shovel of dirt was turned at the site of the new underground garage in ceremonies at Portsmouth Square. Subsequent to the commencement of construction of the garage, a joint committee of the Recreation and Park Commission and the Art Commission sought a revised landscape plan which would be acceptable to all agencies of the City including the Art Commission, which had not approved the landscape plan officially adopted by the Recreation and Park Commission and the Board of Supervisors. This necessitated amending the legal documents. Accordingly, this office prepared an amendment to the agreement calling for a modification of the landscape plan, substituting a new landscape plan designated as Plan 16C, which plan

was approved by the Art Commission. This amendment was approved by the Recreation and Park Commission and the Board, and subsequently executed by all the parties to the agreement.

The Fifth and Mission Garage, after less than three years of operation, proved so successful that it became necessary to expand the facility by adding a fifth and sixth level, increasing the capacity by fifty per cent from 1000 to 1500 automobiles. This office participated in the preparation of, and approved, the legal documents necessary to effectuate the expansion and also prepared the necessary legislation for action by both the Parking Authority and the Board of Supervisors. In connection with the bonds issued to finance the expansion, a deputy from this office appeared before the Tax Ruling Division of the Internal Revenue Service and was successful in obtaining a favorable ruling within ten days, thereby permitting an early commencement of this much needed expansion project. Bond closing ceremonies were held on May 4, 1961, and work commenced on May 20, 1961. It is anticipated that this project will be completed in the early part of November, 1961, in time to accommodate the heavy demand for parking during the forthcoming Christmas shopping season.

In connection with the expansion of the Fifth and Mission Garage, the plans called for the installation of certain automatic parking devices and signal equipment which were later determined to be patented devices. As a consequence thereof, this office was requested to and did render a written opinion (No. 1549) concerning the City's liability for patent infringement which might result from the installation of an electronic space inventorying counting system.

During this fiscal year preliminary steps were taken on three new parking projects: the Neighborhood Parking Project, the Japanese Cultural Center Garage Project, and the Golden Gateway Garage Project. Numerous meetings and conferences were attended and legal studies were made during this fiscal year, and it is anticipated that the plans for all three of these projects will be fully developed and legal formalities therefor completed during the ensuing fiscal year.

During the year seventeen regular and four special meetings of the Parking Authority were attended by one of my deputies as well as numerous informal meetings and conferences in connection with specific projects and problems, including, among others, the Candlestick Park Parking Facility and the Telegraph Hill Parking problem.

It is significant to note that because of San Francisco's leading role nationally in the field of public off-street parking, numerous requests have come to this office from City Attorneys throughout the nation for copies of our legal documents and other information. It is with pride that the City Attorney's office can report that it has been able to assist many other cities because of the vast knowledge gained from twelve years of experience in this rapidly expanding field of municipal law.

CONCLUSION

The conclusions entered below are substantially as of last year with certain additions. You desired in addition to our general report that we answer the following:

1. Comment on the Progress of Capital Programs

This query will not apply to this department; hence, no comment.

2. Suggestions or Recommendations of City Attorney's Department or City Affairs Generally

(a) Inadequacy of Quarters

For many years past, I have reported to you on this subject and you are referred to those reports. You are aware we are occupying a considerable area that was formerly a corridor that permitted the general public to traverse around the second floor of the City Hall. This has been cut off from public use and a large portion of our staff and library, including the telephone operator and the reception counter, are situated in what is actually the corridor of the City Hall.

The present arrangement impairs badly the efficiency of the attorneys due to crowded conditions and the grossly inadequate space for stenographic and clerical forces and proper library facilities.

(b) Necessity for Increase of Staff

You are respectfully referred to my previous Annual Reports to you on this subject. The increase of business requires additional deputies to carry out the work of this office.

Recently the Redevelopment Agency established its own legal staff and has the staff answerable only to that commission. It is to be noted that the Superior Court made its order in view of three resolutions, three ordinances and three contracts, the latter entered into between the City and the Agency, in which it was provided that the City Attorney's office shall be used to the maximum extent possible; that this office was the legal representative of the Agency. Despite the Superior Court decision, the Agency applied in an original proceeding before the District Court of Appeal in an endeavor to reverse the Superior Court and an opinion from this court will be received shortly.

From the inception of the Redevelopment Agency, this office has represented them throughout all the years and has

established them and the constitutionality of the act under which it operates before the United States and California Supreme Courts, as well as another case before the California Supreme Court that tested the legal adequacy of the act. We have done all the legal work for the Agency from its inception and are continuing to do certain of its trial and contract work. You are aware the City, from a dollar standpoint, is liable for one-third of the cost of the projects undertaken by the Redevelopment Agency and has a city-wide interest in redevelopment that in a sense transcends the interest of the Redevelopment Agency. Hence, it is incumbent and our Charter requires that I have a representative participate in each of the eminent domain proceedings that I have heretofore instituted in the name of the Redevelopment Agency. These suits involve many millions of dollars and the City cannot permit itself to go unrepresented in any legal proceedings when, as I have stated above, we are liable for one-third of what the outcome may be.

3. Comparison of Expenditures with Budget
Appropriation for 1960-1961

It pleases me to report that this office stayed within the budget of 1960-1961, except for a supplemental appropriation for jury fees and court costs.

4. Comparison of Revenues as Estimated
in Budget of 1960-1961

The only revenues that the City Attorney's office received are interdepartmental transfers; and funds for attorneys and stenographers paid by the Redevelopment Agency. It might be well to point out that this office was instrumental in recovering \$196,213.00 for the various City departments during the past fiscal year.

5. Comment on the Two Previous Items

I deem no comment is necessary.

6. Statistics on Work Accomplished

Throughout the report certain statistics are set out.

Respectfully submitted,



DION R. HOLM
City Attorney

ANNUAL REPORT

of the

CITY ATTORNEY

CITY AND COUNTY OF SAN FRANCISCO

July 1, 1961 - June 30, 1962



Thomas M. O'Connor
City Attorney

ANNUAL REPORT

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CITY AND COUNTY OF SAN FRANCISCO

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Thomas M. O'Connor
City Attorney

AWRENCE S. MANA
HIEF DEPUTY CITY ATTORNEY

DMOND P. BERGEROT
CHIEF TRIAL DEPUTY

DEPUTY CITY ATTORNEYS

NORMAN SANFORD WOLFF
C. WESLEY OAVIS
VIRL BENNEHOFF
BERNARD J. WARD
GEORGE E. BAGLIN
THOMAS J. BLANCHARD
DONALD J. KROPP
JOHN ELMER BARRICKLO
THOMAS A. TOOMEY, JR.
JEROME COHEN
AGNES O'BRIEN SMITH
FRANK J. NEEDLES
GEORGE P. AGNOST
WILLIAM E. MULLINS
ROBERT M. DESKY
SAMUEL E. YEE

THOMAS M. O'CONNOR
CITY ATTORNEY

CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

WILLIAM F. BOURNE
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

RAYMOND J. REYNOLDS
PATRICK R. KELLY
JOHN J. TAHENY, JR.
MCMORRIS M. DOW
PAUL J. DI NOIA
ORVILLE I. WRIGHT
ROBERT A. KENEALEY
DONALD J. GARIBALDI
JAMES J. STARK
ROLAND J. HENNING
EDMUND A. BACIGALUPI
BEATRICE CHALLISS LAWS
RAYMOND E. AGOSTI
MICHAEL C. KILLELEA
JAMES B. BRASIL

PAUL B. HOLM
ADMINISTRATIVE ASSISTANT

ROBERT R. LAUGHEAD
CHIEF VALUATION AND
RATE ENGINEER

September 11, 1962

The Honorable George Christopher
Mayor of San Francisco
City Hall
San Francisco 2, California

Dear Mayor Christopher:

The Report of the City Attorney's office for the
fiscal year 1961-1962 is attached.

The Report covers the work of the City Attorney's
office during the last six months of the term of my predecessor,
The Honorable Dion R. Holm, from July 1, 1961 to January 8, 1962
and for the period when I assumed office on January 8, 1962 to
June 30, 1962.

Very truly yours,

Thomas M. O'Connor

THOMAS M. O'CONNOR
City Attorney

THE HISTORY OF THE
CITY OF BOSTON

From the first settlement of the
city in 1630 to the present time.
By SAMUEL JOHNSON, Esq.
of the Middle Temple, London.
In two volumes.
The first volume contains the history
from 1630 to 1700. The second
volume contains the history from 1700
to the present time. The first
volume is now in the hands of
the printer. The second volume
is now in the hands of the
publisher.

Printed by S. KNEELAND, at the
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ANNUAL REPORT
OF
CITY ATTORNEY THOMAS M. O'CONNOR

July 1, 1961 - June 30, 1962

The City Attorney is the chief legal officer of the City and County of San Francisco and his duties as prescribed by Section 26 of the Charter provide, among other things, that he must represent the City in all actions and proceedings in which it may be legally interested, or for or against the City and County, or any officer of the City and County; that he must give his advice and opinion in writing to officers, boards and commissions of the City and County; that he must prepare or approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

The unique situation of San Francisco being both a city and county necessitates the City Attorney also acting as County Counsel in those matters wherein the City and County of San Francisco is acting as a county.

This Annual Report of the City Attorney for the fiscal year July 1, 1961 to June 30, 1962, covers the work of my predecessor Dion R. Holm for the period July 1, 1961 to January 8, 1962, and the work of the Office of the City Attorney during my administration for the period January 8, 1962 to June 30, 1962.

LITIGATION DEPARTMENT

The City and County carries on a multitude of activities of both a governmental and a proprietary nature, and in connection with the said activities much litigation arises in which the City is either a party defendant or a party plaintiff. A great proportion of the work handled by the office of the City Attorney involves representation of the City departments and officers in these matters which are the subject of litigation. The litigation in which the City and County is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Tort litigation in which the City and County is named defendant for personal injury or property damage alleged to have been received constitutes the greatest volume of litigated matters handled by the office of the City Attorney. Such tort litigation arises generally from the operation of the Municipal Railway or from governmental activities performed by the City and County

wherein governmental immunity has been waived under the Public Liability Act of 1923, the Motor Vehicle Code, or other statutes.

Since the establishment of new discovery procedures by State law and the ever-expanding use of pre-trial procedure by the courts of the State of California, the preparation of tort litigation for trial necessitates a great deal of work by members of the staff.

Generally, the steps followed in the preparation of these cases are the arranging for and reviewing of investigations, securing medical reports for analysis to determine the extent of injury, the taking of depositions of parties to such actions, the pre-trial hearing and, finally, the disposition of the case by settlement or trial.

During the fiscal year 1961-1962 the following number of depositions were taken:

Municipal Railway cases	798
Non-Railway cases	<u>196</u>
Total	994

1. Municipal Railway

The Municipal Railway, the transit system operated by the City and County, accounts for the greatest volume of tort litigation handled by the City Attorney's office each year. Following is a table illustrating the work done for the Municipal Railway during the last fiscal year:

Actions filed	398
Actions tried, settled or dismissed	426
Actions pending at end of fiscal year	947
Prayers of actions pending at end of fiscal year	\$28,527,043
Claims filed against Municipal Railway	2,995

This office also rendered services to the Claims Department of the Municipal Railway. In respect to the settlement of claims, except those under \$500, a review is made by this office and a valuation for the purpose of settlement is made on each claim. Written approval of each settlement is given to the Public Utilities

Commission and the Controller. Releases and other closing papers are also approved in each instance. During the fiscal year 1,705 such non-litigated claims were settled by the Claims Department after rendition of services in regard thereto by this office.

The 426 litigated cases disposed of, previously referred to above, represents total prayers of \$9,697,677. The City paid \$943,887 in settlements and judgments, which was 9.7% of the total prayers. Following is a breakdown of the disposition of these 426 litigated cases:

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments</u>				
Paid	54	\$ 866,915	\$175,683	20.3
Won or dismissed	<u>106</u>	<u>1,072,089</u>	<u>--</u>	<u>--</u>
Total Judgments	160	\$1,939,004	\$175,683	9.1
<u>Litigated Settlements</u>	<u>266</u>	<u>7,758,673</u>	<u>768,204</u>	<u>9.9</u>
<u>Total Judgments and Litigated Settlements</u>	<u>426</u>	<u>\$9,697,677</u>	<u>\$943,887</u>	<u>9.7</u>

During this fiscal year the City Attorney's office appeared at hearings of the Coroner and the Criminal Division of the Municipal Court when there was the possibility of substantial damage claims subsequently being filed against the City and County. Many operators of the Municipal Railway were represented by this office at these hearings. This office also periodically met with Municipal Railway officials to discuss the various problems connected with the general areas of management, operations and personnel.

2. Other Departments

Although the Municipal Railway accounts for the greatest portion of the tort litigation handled by this office, there are many other departments of the City that required our services. This type of litigation generally stems from the waiver of governmental immunity under the provisions of the Public Liability Act of 1923 or the Motor Vehicle Code. There has been a decided national trend these last few years for the awarding of damages liberally by both jury and court. This trend has contributed a great deal to the increase of the number of lawsuits filed against not only the City and County of San Francisco, but all municipalities.

Even though these actions involve practically all departments of the City and County, the majority involve the Department of Public Works, which has the responsibility of maintaining our sidewalks, sewers, streets and other public works.

During 1961-1962 fiscal year a total of 737 claims were filed against all departments of the City and County other than the Municipal Railway.

(a) Department of Public Works

The City Attorney's office disposed of 83 cases during the fiscal year through court action or settlement involving actions arising from the condition of sidewalks, curbs or roadways, sewers or equipment of the Department of Public Works. Listed below is a breakdown of the cases disposed of and the amount paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
83	\$3,296,825	\$120,891	3.69

Sidewalk Cases

In the past the sidewalk cases accounted for fifty per cent of Public Works cases. This year the number represents approximately sixty-three per cent. Following is a summary of sidewalk cases disposed of during the fiscal year 1961-1962:

<u>Number of Cases Disposed of</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
52	\$1,396,916	\$53,140	3.09

(b) Departments Other Than
Department of Public Works

A substantial number of tort cases arise from the operation of other departments of the City and County, particularly the Police Department, the Recreation and Park Department, San Francisco Unified School District, Fire Department, Department of Public Health and Real Estate Department. The summary below indicates the number of actions actually terminated for these and the other departments enumerated.

A summary of the disposition of the cases of said departments follows:

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Police	23	\$ 702,925	\$ 8,627	1.23
Recreation and Park	9	460,104	16,225	3.53
S.F. Unified School Dist.	7	790,116	57,830	7.32
Water	4	42,320	249	.59
Public Health	4	99,460	1,250	1.26
Fire	5	192,500	332	.17
Real Estate	3	60,319	--	--
Parking Authority	2	422,165	16,601	3.93
Airport	1	383	383	100.00
Civil Service	1	8,400	--	--
Electricity	1	15,000	--	--
Hetch Hetchy	1	85,000	3,000	3.53
Library	1	50,000	500	10.00
Sheriff	1	100,000	--	--
Welfare	1	200	--	--
Total	63	\$3,028,892	\$104,997	3.47

Recapitulation of Statistics
on Tort Litigation

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Public Works	83	\$ 3,296,825	\$ 120,891	3.69
Other governmental departments	<u>63</u>	<u>3,028,892</u>	<u>104,997</u>	<u>3.47</u>
Total	146	\$ 6,325,737	\$ 225,888	3.57
Municipal Railway	<u>426</u>	<u>9,697,677</u>	<u>943,887</u>	<u>9.73</u>
Total of all tort litigation	<u>572</u>	<u>\$16,023,414</u>	<u>\$1,169,775</u>	<u>7.30</u>

B. OTHER LITIGATION

In addition to the tort litigation as reported in this report, the City and County had a great deal of other types of litigation during this past fiscal year. These cases emanate from the functions of the various boards, commissions, bureaus and departments and their respective officers. There follows within this report a detailed resume of this office's participation in

litigated matters in connection with the San Francisco Unified School District, the Public Utilities Commission, the Retirement System, the Parking Authority, the Public Welfare Department, abatement and condemnation of public nuisances, and franchise, rate, and tax matters.

The other litigation, not specifically reported, in which the City Attorney's office participated in behalf of the City and County of San Francisco was generally from the following activities: mandate and injunction actions against the Department of Public Health, the Public Utilities Commission, the Civil Service Commission, Recreation and Park Department, and Board of Permit Appeals; eminent domain actions for acquisition of private property for public purposes; writ of prohibition against the Public Defender; various actions for the refund of taxes illegally or erroneously collected; declaratory relief actions against the San Francisco City and County Employees' Retirement System; and actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances.

C. APPELLATE LITIGATION

As in past years, this office was engaged in representing the City and County of San Francisco on many appellate matters involving appeals from judgments rendered in trial courts, during the past fiscal year ending June 30, 1961.

During this period eleven matters were decided by the State District Court of Appeal and one matter was heard and determined by the Appellate Department of the Superior Court.

Following is a digest of some of the appellate matters prepared and tried by our office this past fiscal year:

Ngim v. City and County of San Francisco, 193 Cal. App. 2d 138, involved a judgment for damages to property resulting from a flooding of a store basement as a consequence of a broken sewer. The District Court of Appeal reversed the judgment, holding that the Public Liability Act (Government Code Sections 53050 et seq.) applied to this type of action and that the jury should have been so instructed.

In City and County of San Francisco v. Burton, 201 A.C.A. 824, the District Court of Appeal decided that the fact that similar zoning violations may exist in the same vicinity as the defendants' property does not prevent the City from enforcing its zoning ordinance against defendants' property since such enforcement does not constitute a denial of the equal protection of the laws. The defendants had appealed from an injunction ordering them to return their building to single family occupancy. Prior to defendants' purchase, the building had been converted without permit to a multiple unit dwelling where the zoning ordinance classified the area as first residential.

Pacific Telephone & Telegraph Co. v. City and County of San Francisco, 197 A.C.A. 160, has terminated the long and difficult telephone franchise litigation by affirming the judgment of the trial court, on retrial, which declared that the Telephone Company already possessed a franchise under Civil Code Section 536, now Public Utilities Code Section 7901, and that the City, therefore, could not require the Company to obtain a franchise from and pay franchise compensation to the City. Following this decision the City negotiated a settlement with the Company of the latter's suit to recover for telephone service rendered to the City since October 3, 1956. As part of the settlement the Company reduced its claim for telephone service and waived interest on the unpaid bill. In the settlement the City also obtained certain rights to the use of the Company's poles and conduits for the City's police communication, fire alarm, and traffic control systems.

Redevelopment Agency v. Superior Court, 195 Cal. App. 2d 591, Blum v. City and County of San Francisco, 200 A.C.A. 637, and City and County of San Francisco v. Western Airlines, 204 A.C.A. 137, are listed in other sections of this report.

Although several other cases were decided by the appellate courts during the fiscal year, the facts and rules of law discussed in these cases were not unusual in nature and, therefore, not digested herein. For your information, the following cases were also concluded:

Gelini v. City and County of San Francisco,
199 A.C.A. 362;

Feder v. Lahanier, 200 A.C.A. 483;

Rash v. City and County of San Francisco,
200 A.C.A. 198;

American Can Co. v. City and County of San Francisco,
200 A.C.A. 580;

Carrick v. City and County of San Francisco,
202 A.C.A. 444;

Wider v. City and County of San Francisco,
No. 2704, Appellate Department of the Superior Court.

Summary of Appellate Cases

<u>Municipal Department Served</u>		<u>Court</u>
Bureau of Light, Heat and Power	1	Appellate Dept. Superior Court
Airport	1	District Court of Appeal
Civil Service Commission	1	District Court of Appeal
Redevelopment Agency	1	District Court of Appeal
Municipal Railway	4	District Court of Appeal
Retirement System	1	District Court of Appeal
Public Works	2	District Court of Appeal
Planning Commission	1	District Court of Appeal
TOTAL	12	

PUBLIC UTILITIES DEPARTMENT

A. GENERAL

This section of the office performs services for the Public Utilities Commission and for the San Francisco International Airport, Hetch Hetchy Water Supply, Utilities Engineering Bureau, Bureau of Light, Heat and Power, Water Department, and the Municipal Railway.

These services consist of the handling of litigation, including proceedings before administrative agencies, advising the Commission and the managers and employees of the various utility departments on various legal questions, the drafting and approval of various legal instruments, including contracts, leases, permits, and the like, and the review of claims. In addition, opinions and memoranda are prepared regarding many different aspects of utility law.

As will be observed, the major projects of the Public Utilities Commission, such as the Canyon Power development, the expansion of Water Department facilities, pursuant to a \$115,000,000 water bond program, the South Terminal Building construction, and other improvements effected by the departments concerned, have necessitated solution of numerous legal questions, in close cooperation and consultation with said departments.

The assistance of this office also extends to the review of current legislation which may affect the operation of said departments, and to appearances before legislative bodies regarding such legislation.

B. AIRPORT

1. Litigated Matters

In the past fiscal year, the City and County of San Francisco obtained an affirmance by the District Court of Appeal of a judgment in its favor against Western Airlines, Inc., for the sum of \$214,385.74, representing disputed rates and charges paid under protest by said airline for the period 1951-1957. Subsequent to said affirmance, the District Court of Appeal denied Western a rehearing, and at the conclusion of the fiscal year, Western had petitioned the California Supreme Court for a hearing of the cause. Subsequent to the conclusion of the fiscal year, said petition for hearing by Western was denied.

Other litigation in which the City and County of San Francisco became involved over the past year, is the defense of an action brought against it by four property owners who own residences adjacent to the Airport, which action is pending in the San Francisco Superior Court and is entitled "Field v. City and

County of San Francisco." The four plaintiffs prayed for \$200,000, as damages which they claim occurred due to alleged nuisance, trespass and taking of property assertedly caused by the proximity of airline operations on the Airport. The City and County filed a demurrer and motion to strike, which are now pending.

There are also 59 other claims which have not yet been litigated but which have been filed by other residents adjacent to the Airport. All claimants rely on the same allegations of damage and loss.

Another action involving the Airport was brought by the City and County against a union to enjoin picketing by that union in conjunction with a labor dispute between it and an Airport concessionaire and in which the City was not involved. A restraining order was obtained limiting picketing inside the Terminal Building, and the matter was fully briefed and argued on an order to show cause. It became moot before decision following settlement of the labor dispute.

In addition to the three actions already discussed, there were 15 other actions involving San Francisco International Airport, including an action brought by the City and County to recover damages for injuries to an Airport concourse by a motor vehicle, the defense of an asserted patent infringement (which resulted in effectuation of an agreement by the contractor involved to hold City and County harmless), three actions in eminent domain, two of which were concluded during the course of the year on payment to the City and County of fair compensation on the acquisition of Airport properties by other public entities, and ten personal injury actions.

(a) Airline Route Proceedings

Further proceedings were held in regard to the San Francisco-New York Nonstop Case which is currently pending in the Court of Appeals for the District of Columbia. This case originated through petitions of United Air Lines and TWA to set aside the order of the Civil Aeronautics Board authorizing American Airlines to render nonstop air service between San Francisco and New York. United and TWA alleged that ex parte activities by representatives of American Airlines and San Francisco had improperly influenced the Board's decision. The examiner for the Board had previously determined that the decision of the Board had not been influenced by improper practices, and in the past year the full Board issued an opinion on remand favorable to the City, confirming the decision of the examiner. Thereupon, the matter was returned to the Court of Appeals and, pursuant to such remand, the City and County of San Francisco filed a brief with the Court preparatory to oral argument of the matter during its fall term.

Proceedings also took place in the Trans-Pacific Route Case wherein an examiner of the Board in a reopened proceeding

issued a recommended decision in accordance with the brief filed on behalf of the City and County to the effect that South Pacific Airlines should be awarded a main line route from San Francisco and Los Angeles to Tahiti, both directly and via Honolulu. San Francisco is currently supporting the examiner's decision before the full Board, and said matter was argued on July 9, 1962. The domestic phase of the Trans-Pacific Route Case regarding additional service to Hawaii has also been reopened by the Civil Aeronautics Board.

Other proceedings include:

The Pacific-Southwest Local Service Case, in which the Board confirmed an examiner's decision providing for the first time competitive air service from San Francisco to Las Vegas and San Diego, the establishment of a third unrestricted trunk carrier to Los Angeles, and nonstop service to Ontario and Palm Springs;

The Southern Transcontinental Service Case, in which the City and County successfully maintained the position that San Francisco and Oakland be a single hyphenated point so as to allow the two new carriers certificated in that proceeding to serve either San Francisco or Oakland Airports as determined by their own choice;

The Oakland Adequacy Case, in which this office participated as an observer in informal hearings and has filed a petition to intervene;

The United States-South American Route Investigation, in which this office is preparing studies and a traffic survey in connection with the possible designation of San Francisco as a terminal city;

The Detroit Nonstop Case, in which San Francisco has intervened and is preparing data for submission.

This office also participated in a certification proceeding before the California Public Utilities Commission in which Airport ground transportation service for airline passengers was authorized between the Airport and the Monterey-Fort Ord area.

2. Nonlitigated Matters

The Public Utilities division participated in numerous conferences regarding Airport matters, and issued advice by opinion, by letter, and on an oral conference basis on numerous occasions.

During the past year, this office prepared legal documents for the \$9,800,000 bond issue for the construction of an Airport parking facility, and prepared documents for the five-year extension of the agreements with scheduled air carriers governing rates and charges for the common use facilities.

The office took part in lengthy negotiations resulting in a consent by the City and County to the assignment of the Hilton Hotel lease to permit a major financing transaction on behalf of Hilton Hotels and Hilton Inn, Incorporated.

Another major subject processed by this office during the past year was the preparation of the carriers' leases for the occupation of the South Terminal Building which is now under construction.

Other leases prepared by this office include the Pacific Southwest Airways lease for Plot 10C, that for Pier C, and several amendments to leases.

This office likewise prepared a partial revision of Airport rates and charges for landing field uses by small planes; and investigated Airport drainage liability questions, law concerning landing field operational problems, and questions regarding the parking lot lease and taxicab operations.

Formal opinions were rendered regarding leasing of Airport lands, certain questions of tort liability arising out of leases, and the legal issues regarding capital improvement programs by tenants.

This office also furnished legal advice in connection with the formation of the San Francisco Airport Improvement Corporation, a public non-profit corporation which will assist with the financing of improvements undertaken for the development of Airport property on a cooperative basis with Airport tenants.

Furthermore, this office constantly reviews claims regarding certain tort liabilities which are filed in the course of Airport operations.

C. HETCH HETCHY WATER SUPPLY, POWER AND UTILITIES ENGINEERING BUREAU

1. Litigated Matters

A major matter undertaken by this department during the past year was the filing of nine actions in the United States District Court in San Francisco by reason of antitrust violations committed by manufacturers of electrical equipment which sold articles for use in the Hetch Hetchy power project and, in one instance, at the San Francisco International Airport. The firms which are defendants are those which were indicted by the United States Government in the criminal proceedings in the United States District Court in Philadelphia and which pleaded to and were fined by reason of such antitrust violations, consisting of nationwide conspiracies to fix prices, and allocate and predetermine bids and markets in twenty product lines.

Said purchases from the electrical manufacturers involved amounted to almost \$6,000,000, and the City is seeking to recover treble damages allowed in the event of recovery under the antitrust provisions of the Clayton Act. Legal research and statistical work has been done in connection with these actions, both prior to and subsequent to the filing thereof.

Another major action was originally brought in the San Francisco Superior Court by the Allis-Chalmers Manufacturing Company against City, which seeks to invalidate an award of a bid, for the installation of turbines on the Canyon Power project, to Baldwin-Lima-Hamilton (Pelton Division), under circumstances where the bid was based upon the use, in part, of foreign manufactured components.

This litigation concerns the so-called "Buy American" Act which is found in the California Government Code, and the inapplicability of that Act when contrary to the provisions of treaties of the United States, including the multilateral GATT treaty. Allis-Chalmers challenged provisions in City's invitation to bid, and the matter was tried and argued in the Superior Court. Before findings were entered therein, Baldwin-Lima-Hamilton filed a writ of prohibition in the California Supreme Court, which writ was transferred to the District Court of Appeal, where the alternative writ issued and the full matter was set for argument on August 14, 1962. On that day the Court heard arguments and took the case under submission. No decision has as yet been rendered.

Other important litigation involving this department is reported in the Tax and Rate Section of this Annual Report where a summary is made of the Tuolumne assessment matter wherein, following administrative adjudication and litigation, the tax assessment on City's properties in Tuolumne County was adjusted downward, pursuant to compromise, from \$15,000,000 to \$3,000,000.

Other Hetch Hetchy litigation included the four actions in eminent domain which were filed by public entities in three different counties in the area of the Hetch Hetchy project, three of which were concluded during the past year on payment of proper compensation to City for interests acquired by other public bodies. One such action is still pending and in the course of settlement.

2. Nonlitigated Matters

An important negotiation which continued during the past year was the so-called "Fourth Agreement" with the Turlock and Modesto Irrigation Districts. In regard to this matter, it is to be noted that the California Department of Fish and Game has filed a protest with the Federal Power Commission as a result of objections to certain power features of the new Don Pedro Dam, in the construction of which the City will participate with the Districts in return for being freed of its obligation to store water for the account of the Districts in City's own Hetch Hetchy Reservoir. While a tentative

agreement was worked out with the Department of Fish and Game, said agreement was not approved by the California Fish and Game Commission and City is preparing to participate in the hearing of the matter before the Federal Power Commission.

Also, in regard to certain contemplated appropriations of water from streams in City's watershed areas, a protest was filed before the State Water Rights Board.

This office also drafted contracts, including several consultant and architect contracts, both for Hetch Hetchy operations and for work of the Utilities Engineering Bureau in connection with the Airport, an agreement for the withholding of water for power purposes with the Turlock and Modesto Irrigation Districts, an agreement with the same for the exchange of electrical facilities, and a final fish release agreement for the Canyon Power Project, as well as several other incidental contractual documents.

In the field of legal research, this office delivered three important opinions on the validity of bids, including the bid on the Canyon Power Project tunnel contract, and on bids on two occasions in connection with the installation of the Canyon turbines. Legal advice on an oral conference basis was also given on numerous other subjects, including a multiplicity of departmental problems, bonds, insurance policies, and other legal documents were drafted and reviewed.

D. BUREAU OF LIGHT, HEAT AND POWER

1. Litigated Matters

In its work for the Bureau, the office during the past year defended an action brought by a street lighting maintenance contractor and, on appeal from the judgment, obtained a reversal disallowing interest on retained moneys.

Also, the office conducted the defense of an action which alleged injuries due to asserted defective street lighting.

2. Nonlitigated Matters

In regard to nonlitigated matters, the office researched the question of power charges for service to Fort Mason, and conducted a general review of claims and other legal documents on behalf of the Bureau.

E. WATER DEPARTMENT

1. Litigated Matters

At the beginning of the fiscal year, a final settlement was obtained in regard to 33 actions pending between the City and County and the California Water Service Company and the Town of Hillsborough, by reason of a dispute over charges for water service caused by the existence of certain contracts for water free of charge, or at reduced rates, which were derived from the Spring Valley Water Company on the transfer of its properties to the City and County. On the compromise of these claims, the City obtained a renunciation and deeding to the City of one set of claimed contract rights and a waiver of interest on all sums claimed, while two other sets of contract rights, pursuant to the judgment, were determined to be vested water rights owned by the Company and the Town of Hillsborough. Pursuant to said compromise, all appeals were dismissed.

In this connection, conferences were also held regarding another water service contract action and certain other similar water contract actions were dismissed. As a product of such dismissals, certain other counter-claims against the City and County of San Francisco, representing water rates paid under protest, were also dismissed.

Fifty-seven other actions were processed for the Water Department, in addition to the above, making a total of 91 actions which were prosecuted or defended for the Department in the course of the past fiscal year. One important action was brought by the City and County against Consolidated Lands, Inc. This was a suit to recover for damages caused by excavation by a subdivider. The excavating work caused silt to bury a water pipeline. This matter was dismissed on terms favorable to the City, whereby the defendant agreed, pursuant to an agreement prepared by this office, to furnish a new pipeline right-of-way and to construct a substitute section of pipeline, the cost of which was estimated to be \$130,000.

In another action, brought by the City against a former lessee for damages for failure to clean up premises after conclusion of quarry operations, the matter was settled upon payment by the lessee of the sum of \$8,500, representing the full prayer of the complaint.

Including the foregoing, 38 different cases involving injuries or damages, i.e., tort cases, were prosecuted or defended on behalf of the Water Department. Said actions included two cases prosecuted by the City for damages caused by contractors to its water mains, in one of which the City collected the amount asserted and the other of which is still pending. Several other such actions are in process of settlement.

Also included in this total are seven actions for damages allegedly caused by claimed breaks in City's water mains; four actions arising by reason of claimed damage from blasting in

connection with reservoir sites; seven cases involving alleged personal injury and property damage arising from vehicular collisions; five actions involving personal injuries due to alleged falls in connection with various Water Department facilities, two of which were settled without cost to the City by the agreement of the codefendant to pay any and all damages; several miscellaneous actions, such as an action to enjoin cutting off water service for nonpayment; an action for damages alleged to have been caused by asserted improper service; an action in mandate, wherein the office successfully secured judgment against the reinstatement of a discharged employee; and an action for the recovery of delinquent rent.

Twenty-eight of the actions which were processed by City involved acquisitions by or against the City in eminent domain. In each of these cases, legal work regarding title and the valuation of the property must be performed to make sure that fair value is either paid or secured in relation to the particular property in question.

One matter was tried in the course of the past year in Santa Clara County, wherein the City secured a \$10,686.15 judgment by reason of the acquisition by the Town of Sunnyvale of a one-half acre of Water Department land for municipal purposes.

Other actions of importance were one in which the City and County acquired, in settlement of an action brought by it, three pieces of private property to complete the watershed protection program at the southerly end of Crystal Springs Reservoir. In connection with another such acquisition in the area of San Andreas Reservoir, negotiations were completed for a series of covenants running with the land, whereby the City would acquire certain watershed property, and would, by covenants running with the land, bind adjoining land to the observance of certain requirements for the protection of the purity of the City's reservoirs from contamination or pollution.

Several eminent domain matters were settled on payment to the City and County of fair compensation for the interests acquired, and others are in process of settlement in Santa Clara, San Mateo and Alameda Counties.

2. Nonlitigated Matters

In connection with the work of the San Francisco Water Department in the field of nonlitigated matters, this office prepared numerous types of instruments and participated in conferences regarding the legal aspects of many different transactions. Such a matter over the past year was the development of the proposed Pleasanton Industrial Park, for which proposed leases were prepared and by reason of which this office attended a series of meetings of a joint San Francisco-Pleasanton Working Committee, which is working out the legal and technical details on a cooperative basis between San Francisco and Pleasanton.

Other conferences were held concerning the Water Department contracts for water service to public agencies for resale which have now been successfully concluded with municipal customers in the service area of the San Francisco Water Department; in relation to quarry operations in the Alameda Creek area; in regard to mutual watershed problems; in connection with the use of surface areas of pipeline easements for parking and other purposes; in connection with assessments on Water Department property by local entities. On the basis of one such meeting with the legislative body of the entity concerned, the property assessment on Department property was reduced by one-half.

This office also drafted or approved fourteen leases or instruments involving leases on behalf of the San Francisco Water Department covering numerous auxiliary uses of the Department's properties. Numerous contracts were also drafted, including contracts for consulting and architectural services for engineering and design services for San Antonio Dam, and for other services obtained by the Department.

Legal advice was also rendered on a variety of matters, including such items as the subdivision of Water Department property, water service to the United States Government, changes in delivery points under Water Department contracts, legal rights regarding spur tracks, use of stream channels to convey stored water supplies, the power of certain entities to levy taxes and special assessments, the legality of certain agreements with other public agencies, closing of roads, the effect of lease defaults by Water Department tenants, review of performance of contract obligations, prescriptive rights, and other subjects.

The office drafted the \$115,000,000 water development bond issue and consulted on several legal matters arising in connection therewith.

In addition, bonds and insurance policies and other instruments were reviewed and approved, and claims against the Department were examined and recommendations made for their disposal.

Another important category of work conducted for the Department is the representation of the Department before legislative and other bodies. In the past year, meetings of the Assembly Interim Water Committee of the State Legislature were attended, as were two conferences relative to a proposed constitutional amendment regarding the exemption of water rights from taxation. In this connection, regular review was conducted of federal and state legislation which may affect any of the water and power operations of the City and County, or any of its other property rights.

F. MUNICIPAL RAILWAY

1. Litigated Matters

During the past year, the City successfully defended an appeal in the matter of Blum v. City and County of San Francisco, which appeal had been brought by a contractor seeking the sum of \$27,000 as interest on money withheld due to the pendency of litigation challenging the rerouting of City's cable car system pursuant to Charter amendment. A decision was obtained on the appeal, affirming the judgment of the Superior Court, to the effect that the contractor involved was not entitled to interest upon the moneys withheld.

2. Nonlitigated Matters

In regard to nonlitigated matters, certain agreements were drafted and approved for the Municipal Railway, including one for the use of the ramp area at the East Bay Terminal Building, a contract for the transportation of school pupils, and other matters. Research was conducted regarding such subjects as bus zones, operational safety requirements, the shipment of fare boxes under the fare box lease, and replacement of employees' property stolen while on duty, and other matters, including the review of bonds, insurance policies and other contractual documents.

An agreement of major importance was negotiated in the course of the past year with the Bay Area Rapid Transit District, governing the relocation of Municipal Railway, Water Department, and other City facilities and payment for costs of substituted service in connection with the proposed construction of Rapid Transit subways in San Francisco under the District bond issue which is being submitted to the electorate of the participating counties at the time of the general election this November. The office drafted the agreement and participated in conferences and negotiations with the District as well as with the several departments of the City which are affected thereby.

As elsewhere observed, constant review is also made of the claims which are filed in regard to the operation of the Municipal Railway. Municipal Railway accident litigation is reported in another division of this Report.

G. PUBLIC UTILITIES COMMISSION

The Public Utilities Counsel regularly attends meetings of the Commission and is available for rendering advice on current legal problems. Such advice was rendered to the Commission and to the Manager of Utilities on numerous occasions during the past year and, in addition, resolutions and other legal documents were prepared on behalf of the Commission. Settlements were processed for Commission approval, and on several occasions the Commission was advised formally by written opinion.

TAX AND RATE DEPARTMENT

A. GENERAL

Many issues required extensive participation before regulatory bodies, such as the California Public Utilities Commission and the Federal Power Commission, by the City Attorney on behalf of San Francisco ratepayers. Every proposed increase in rates for utility services must receive thorough and impartial review in the public interest, and, if deemed excessive, must be vigorously contested by this office.

The past year found the City Attorney actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of ratepayers concerning virtually every type of regulated service--gas, electricity, telephone, transportation. The scope of these proceedings involved both rates and rules and regulations, and this office participated in 34 days of hearings to be discussed herein.

B. GAS

El Paso Natural Gas Company. These rate matters were reported on in the last annual report, and the cases were continued in the current year.

The State of California at the present time receives 75 per cent of its entire natural gas supply from out-of-state sources, principally from El Paso Natural Gas Company. The average price at the California border for this gas has risen 119 per cent since the year 1947. El Paso Natural Gas Company, pursuant to existing law, was entitled to, and did, file increased tariffs with the Federal Power Commission for the period commencing with the year 1955. These rates have now been the subject of extensive hearings before the Federal regulatory agency for the purpose of determining to what extent they are fair and reasonable.

Four dockets are consolidated for decision in the El Paso Natural Gas Company rate matters. The first of these four dockets--No. G-4769--was submitted to the Commission in May, 1962, for determination of an allowable rate of return on wellhead and production properties. The remaining three dockets--Nos. G-12498, G-17929 and RP 60-3--were also submitted on the single issue of rate of return, but all other issues on which actual rates will be established were continued in open hearing before the Commission.

San Francisco, pursuant to resolution of the Board of Supervisors, was represented in these latter hearings before the Federal Power Commission. The hearings were concluded as of June 5, 1962, and the matter was submitted subject to the filing of written briefs by the parties and intervenors. Under existing procedure, the hearing examiner's decision will thereafter be issued, subject to review and the filing of exceptions, and will thereafter be submitted to the Federal Power Commission for its final determination.

San Francisco's evaluation and brief of all the evidence brought out in the several hearings has been submitted. It is our position that the factors underlying cost of service, depreciation expense, and federal taxes combine to indicate that as of January 1, 1963, a sum in the amount of \$174,000,000, including interest, should be refunded to California consumers. Of this amount approximately \$15,000,000 is applicable to gas consumers residing and doing business within the City and County of San Francisco.

Area rate proceedings. These matters before the Federal Power Commission are of equal importance to the gas rate matters just discussed. This for the reason that the Federal Power Commission has in process of hearing dependent matters of how future gas rates will be ultimately determined at the producer level. For example, the first docket--No. AR 61-1--involves the Permian Basin area which supplies El Paso Natural Gas Company with the bulk of the gas it ultimately transports and sells to California gas distributing utilities.

A major factor in the aforesaid increase in the border price of gas has been occasioned by substantial raises in the price paid by the pipeline companies to the producers for out-of-state gas.

Use of natural gas by consumers in the City and County of San Francisco for the year 1961 amounted to 7,795 cu. ft. per month per customer, at an average price of 78 cents per Mcf. Because of climatic conditions which vary from year to year, an exact comparison on an annual basis is not meaningful without adjustments for temperature that will not be herein attempted.

The California Public Utilities Commission's Natural Gas Investigation. The Commission is currently conducting a natural gas investigation within the State of California for the purpose of insuring that local gas supplies, accounting for 25 per cent of total source gas, are being controlled in a way which reflects the public interest. Hearings in this regard had not been concluded as of June 30, 1962.

C. ELECTRIC

The past year has seen no change in electric rates from those in effect in the preceding year. Stability of these rates has, in fact, been prevalent since November 15, 1957, the date of the last authorized electric rate increase to Pacific Gas and Electric Company by the California Commission.

An influencing factor in the continuing stability of electric rates has been the continuing annual increase in the volume of kilowatt hours consumed. In 1960, the average consumer purchased 157 kilowatt hours of electricity per month, at a cost of \$4.78, being 3 cents per kilowatt hour. In 1961, the average consumption

was 164 kilowatt hours, at \$4.84, being 2.95 cents per kilowatt hour. Electric rates are so designed that greater number of kilowatt hours purchased have the effect of reducing unit cost to the minimum shown on the approved tariff schedule. In San Francisco, the lowest block on said rate schedule is approximately 1.28 cents per kilowatt hour.

It is noteworthy that the Pacific Gas and Electric Company has continued to elect to accept the tax savings resulting from the use of accelerated depreciation of its plant and equipment devoted to electric service, thus offsetting higher labor and material charges in the electric department.

D. TELEPHONE

The most important development with reference to telephone rates in San Francisco has been the initiation by the California Public Utilities Commission of an investigation to review the operations and earnings of The Pacific Telephone and Telegraph Company, a Bell subsidiary. These pending proceedings were initiated by the California Commission on its own motion for the purpose of investigating present rates and charges for telephone service in the State of California.

The Pacific Telephone and Telegraph Company last received an authorized rate increase to San Francisco consumers in the year 1958. A single-party resident telephone costs \$5.05 per month, while a two-party line is \$3.90 per month, plus taxes. In 1961-1962, the number of telephone connections in San Francisco has increased by 11,150.

E. TRANSPORTATION

Yellow Cab Company. Rates were increased by the Board of Supervisors during the past year. Working in cooperation with the office of the Controller, the City Attorney prepared and presented a report to the Board of Supervisors in connection with the application of Yellow Cab Company for an increase in taxicab rates. Following hearings and investigation, a rate increase was authorized in June of 1962. An additional 10 cents per mile was granted to Yellow Cab Company, and the initial flag charge was reduced from 50 cents to 45 cents. The rate adopted by the Board of Supervisors was \$204,000 less than that requested by the Yellow Cab Company on an annual basis.

Railroad crossing protection costs. These were the subject of proceedings before the California Public Utilities Commission with reference to the application of Sacramento Northern Railroad Company. Sacramento Northern had applied to the Commission for its order requiring the City of Concord to assume the cost of maintaining a new crossing in that municipality.

San Francisco, together with the League of California Cities and other interested municipalities, opposed Application No. 43559 for the reason that it would establish a dangerous deviation from past practice of railroad corporations in the matter of assigning costs incurred in the furnishing of signal protection. Copious past precedent establishes that where a new crossing is installed, the continuing costs of maintaining railroad signals are properly charged to the utility and not to the municipality within which the crossing exists.

This matter was taken under submission by the California Public Utilities Commission and decision thereon is forthcoming.

F. TAXATION

County of Tuolumne v. State Board of Equalization, 5 Civil No. 70, involves an annual tax of such potential magnitude as to have an appreciable effect upon rates and charges for water and power garnered in the Sierra Nevada by the San Francisco Hetch Hetchy Water and Power System. A decision in this case was handed down in May of 1962 by the District Court of Appeal for the Fifth Appellate District, San Francisco appearing therein as the real party in interest.

Prior to 1914, the California Constitution provided that all property owned by municipal corporations such as San Francisco, wherever located, was wholly exempt from ad valorem taxation. In the first decade of this century, San Francisco selected the Tuolumne watershed as its source of water and power for future years, and initiated a vast program to develop the Tuolumne River and its tributaries for the benefit of Bay Area communities. During that early period San Francisco initiated legal, administrative and engineering procedures to establish valid claim to Tuolumne water. These procedures included filing of water rights by former Mayor James D. Phelan, by former City Engineer Marsden Mansen, and by the City and County of San Francisco as a corporate body politic. Additionally, San Francisco purchased, for a sum in excess of \$1,000,000, those lands and filings for water rights which had already been acquired by private individuals and corporations in the area of planned development.

In those years of infancy of water development, concern gradually grew that water and power projects, particularly those of San Francisco in Tuolumne County and of Los Angeles in the Counties of Inyo and Mono, would result in substantial impairment of the local tax rolls of mountain counties by removing otherwise taxable properties from the requirement of making their tax contributions to the mountain counties' economies. Solution of the problem was proposed in 1914 by way of a constitutional amendment which provided that all lands and improvements which were subject to taxation at the time they were acquired by local governments would continue to be taxable in the ownership of local government if they were

located outside of the boundaries of the entity making the acquisition. The argument to the voters contained express reference to the Los Angeles and San Francisco projects as primary illustrations of the type of property tax result to be achieved by the amendment, and the measure was passed by the people.

While San Francisco did not buy any fully developed water rights in Tuolumne County, its \$1,000,000 purchase did include certain privately-owned filings for water which were brought forward to completion as water rights, and San Francisco has relied upon these private filings to establish for itself an earlier priority date for its diversions of water than it could otherwise claim. These filings support, in part, present diversions of water, particularly for power purposes, at Cherry Dam and Eleanor Dam, the water being utilized to turn turbines at Cherry Powerhouse, after which the flow continues downstream to satisfy San Francisco's obligations to the Turlock and Modesto Irrigation Districts.

In 1960, Tuolumne County levied an assessment upon all of San Francisco's water rights in that county in the amount of \$6,062,100, to produce a tax liability for the year of \$330,850. San Francisco appealed the assessment to the State Board of Equalization, which, after a full hearing, ordered the assessment reduced to the sum of \$1,214,000, to produce a tax liability of \$69,700. Said decision of the State Board of Equalization was taken to court by Tuolumne County by way of petition for writ of mandate compelling the administrative body to restore those assessments on water rights which it had reduced to zero amounts.

After decision by the Superior Court affirming the Board's order, both San Francisco and Tuolumne took the case to the District Court of Appeal. The latter court also affirmed the State Board's decision, to the effect that only those water rights which depend for priority upon the privately-owned filings acquired by San Francisco are taxable; all others are exempt.

Upon petition therefor, both Tuolumne County and San Francisco were granted rehearing of the initial District Court of Appeal decision, and said decision was clarified and reissued on August 1, 1962.

In the interim period, during the year 1961, Tuolumne assessed all of San Francisco's water rights at \$9,819,000, to produce a tax of \$577,000. Again, upon petition by San Francisco to the State Board of Equalization, and after hearing, the assessment was ordered reduced to \$2,345,000, which would produce a tax in the amount of \$125,000. The allowed assessment increase was predicated upon increased use of water for power purposes at the new Cherry Powerhouse in that year. Tuolumne repeated its legal action of the prior year by again taking the matter into court.

In 1962, Tuolumne assessed all of San Francisco's water rights in the amount of \$15,449,300, to produce a tax of \$898,359.27.

Petition to the State Board of Equalization for equalization, adjustment and review was thereafter duly made by San Francisco.

These, then, were the circumstances in which Tuolumne County and San Francisco found themselves at the time of the August 1, 1962, ruling of the District Court of Appeal, which decision expressly held that San Francisco's water rights predicated upon purchased filings are taxable and all of the balance of its water rights are exempt from tax. Remaining to each party was the right to petition the California Supreme Court for a final legal determination of the question involved. The stakes were high, for, if Tuolumne County were to persuade the Supreme Court that all of San Francisco's water rights were taxable, San Francisco's tax bill for each future year would be at least \$1,000,000, and could, with the advent of the Canyon Powerhouse, conceivably increase to \$1,500,000 per year. On the other hand, were San Francisco to achieve complete tax exemption of all of its water rights in Tuolumne County, the latter would lose taxable properties from its tax rolls, with a resultant decrease of anticipated tax revenues in the approximate amount of \$200,000 per year, at a 25 per cent assessment ratio.

Thus, the justice of settlement of the total tax controversy between the litigants on the basis of the District Court of Appeal decision seemed apparent, and the Public Utilities Commission, together with the Board of Supervisors of Tuolumne County, adopted an agreement disposing of the entire matter. Both entities waived their rights to carry the case to the Supreme Court, and the District Court of Appeal opinion became the final decision controlling the issues therein adjudicated. Additionally, San Francisco consented to a scaling up of the assessment on taxable water rights to 25 per cent of full cash value, being \$3,000,000, and further waived its right to protest assessments upon its reservoir lands in Tuolumne County up to limits informally accepted.

This final disposition of the entire matter is equitable to both counties, in that it reflects the spirit and purpose of the constitutional amendment voted into law by the People of the State in 1914, protecting from tax those water rights San Francisco filed upon in its own behalf and insuring taxation of those properties purchased by San Francisco from private owners. It is anticipated that the broad settlement brought to fruition in this case will carry forward into the foreseeable future, so as to preclude reoccurrence of litigation so detrimental to inter-county cooperation and harmony between Tuolumne and San Francisco.

National Exhibition Company v. City and County of San Francisco, Superior Court No. 508320, involves the important question of whether or not San Francisco will receive tax revenues from the assessment of the interest held in Candlestick Park by the San Francisco Giants. An assessment in the amount of \$1,452,250 was levied upon the Giants' possessory rights to the stadium, and this assessment was sustained by the County Board of Equalization.

Tax totalling \$117,487.03 was thereafter levied by San Francisco, which sum was paid under protest, followed by claim for refund and suit to recover by the taxpayer. The Superior Court, upon hearing, held that no taxable possessory interest was created by the several instruments through which Giants' rights to the stadium were derived, and, further, that, if a taxable possessory interest was created, it was owned by Stadium, Inc., a non-profit corporation, rather than by the Giants. Appeal of the case has been taken by this office to the District Court of Appeal.

Citizens' Federal Savings and Loan Association v. City and County of San Francisco, Superior Court No. 490923, involved a question of correlation between the California franchise and property taxes with respect to certain leasehold improvements constructed by a savings and loan association upon premises leased from private owners. Citizens' had reported the capitalized cost of improvements it had made to the demised premises to the Assessor upon its statement of unsecured taxable properties, together with personal property and intangibles. A tax credit was thereafter taken against California franchise tax by Citizens' on the ground that all of the tax paid upon unsecured properties was personal property tax rather than tax upon real estate, the latter being nondeductible. Upon disallowance of the deduction by the California Franchise Tax Board, Citizens' brought action against both taxing entities to secure refund of the property tax or, alternatively, approval of the deduction. San Francisco obtained summary judgment in the Superior Court, affirmed on appeal with hearing being denied by the Supreme Court, that Citizens' demand for refund of \$7,414.87, plus interest, alleged to have been erroneously paid on real property was barred, principally because of the taxpayers' failure to have properly presented the matter to the Board of Supervisors, sitting as the County Board of Equalization, in the first instance.

LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

During the past year the City Attorney rendered a total of 74 formal opinions to departments and offices of the City. The office also rendered letter opinions dealing with matters not of general interest but only concerning the particular department desiring the legal advice.

In the preparation and issuance of these opinions the procedure has been to require a deputy to draft a proposed opinion and support it with the necessary legal authority, and then submit it for review to another deputy--who checks the legal authority as well as the reasoning contained in the draft. The City Attorney then receives the draft which has been agreed upon by the two deputies and personally checks the accuracy of the authorities cited and the conclusion which is reached in the opinion.

The table below indicates the number of opinions and the departments or offices to which they were issued:

	<u>O P I N I O N S</u>		<u>LETTER OPINIONS</u>	
	<u>7-1-61</u> to <u>12-31-61</u>	<u>1-1-62</u> to <u>6-30-62</u>	<u>7-1-61</u> to <u>12-31-61</u>	<u>1-1-62</u> to <u>6-30-62</u>
Board of Supervisors	8	15	4	1
Civil Service Commission	4	8	1	1
Department of Public Works	4	2		
Fire Department	3		1	
Controller	2			
Health Service System	2		1	
Recreation and Park Dept.	1			
Retirement System	2			
Department of Public Health	5			
Chief Administrative Officer		1	1	
Police Department	2			1
Director of Finance & Records	2	1		
Housing Authority	1			
Department of Public Welfare			1	
Juvenile Court	1	1	1	
Registrar of Voters	2	2		
Public Utilities	1			2
Real Estate Department		1		
Miscellaneous		2		
	<hr/>	<hr/>	<hr/>	<hr/>
	40	34	10	5

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and development. It begins with the first settlers who came to the continent, and it ends with the present day. The story is one of struggle and triumph, of hope and despair. It is a story that has shaped the world, and it is a story that will continue to shape the future.

The first settlers came to the continent in search of a better life. They were driven by the promise of land and freedom. They found a land of opportunity, but they also found a land of hardship. They had to fight for their survival, and they had to build a new society. The story of the United States is a story of the struggle for freedom and the pursuit of the American dream.

The story of the United States is a story of the struggle for freedom and the pursuit of the American dream. It is a story that has shaped the world, and it is a story that will continue to shape the future.

THE HISTORY OF THE UNITED STATES		THE HISTORY OF THE UNITED STATES	
Year	Event	Year	Event
1492	Columbus discovers America	1776	Declaration of Independence
1607	First English settlement in America	1781	End of the Revolutionary War
1776	Declaration of Independence	1789	Adoption of the Constitution
1781	End of the Revolutionary War	1800	Move of the capital to Washington, D.C.
1789	Adoption of the Constitution	1820	Missouri Compromise
1800	Move of the capital to Washington, D.C.	1850	Compromise of 1850
1820	Missouri Compromise	1861	Start of the Civil War
1850	Compromise of 1850	1865	End of the Civil War
1861	Start of the Civil War	1877	End of Reconstruction
1865	End of the Civil War	1898	Spanish-American War
1877	End of Reconstruction	1901	Spanish-American War
1898	Spanish-American War	1914	Start of World War I
1901	Spanish-American War	1918	End of World War I
1914	Start of World War I	1929	Stock Market Crash
1918	End of World War I	1933	Start of the Great Depression
1929	Stock Market Crash	1945	End of World War II
1933	Start of the Great Depression	1945	End of World War II
1945	End of World War II	1954	Start of the Cold War
1954	Start of the Cold War	1963	Assassination of Martin Luther King Jr.
1963	Assassination of Martin Luther King Jr.	1973	End of the Vietnam War
1973	End of the Vietnam War	1981	Start of the Reagan Revolution
1981	Start of the Reagan Revolution	1991	End of the Cold War
1991	End of the Cold War	2001	Start of the 21st Century
2001	Start of the 21st Century	2008	Financial Crisis
2008	Financial Crisis	2016	Trump Wins Presidency
2016	Trump Wins Presidency	2020	COVID-19 Pandemic
2020	COVID-19 Pandemic	2021	Joe Biden Wins Presidency

CONTRACT PREPARATION AND APPROVAL

The work of this office is divided into two general categories relative to contract preparation and approval. Each year, because of the complexities of the service required by the City contracts coming up for renewal, the office has attempted to simplify these contracts and to clarify the language therein where any question relating to their interpretation has been raised.

The second portion of this work is with the drawing of new contracts for new services or activities of the City. In this regard a good deal of time was spent in the preparation of the agreement with the State of California, wherein the City is to be loaned \$1,500,000 for construction of a small boat harbor in the Marina.

The form of contract for the more frequent services has been standardized so that it may more easily be checked.

LEGISLATION

The State Legislature did not meet in regular session during the period covered by this report and, other than Charter amendments which were up for ratification, it was not necessary to appear before the Legislature.

However, during this year a question of the abolishment of sovereign immunity as a result of the Supreme Court decision in the case of Muskopf v. Corning Hospital District has required a great deal of time of deputies who are engaged in studying the various recommended changes in the law brought about by this decision. Similarly, where other pending legislation is being considered by committees of the Legislature this office has been in close contact wherever it felt it could be of assistance.

URBAN RENEWAL ABATEMENT AND CONDEMNATION OF PUBLIC NUISANCES

Acceleration of San Francisco's execution of its Workable Program for Community Improvement has involved, in ever-increasing extent, expansion of its program of enforcement of the building and health laws of the City. Existing codes have been broadened and strengthened. Acceleration of their respective programs of enforcement by the Bureau of Building Inspection and the Department of Public Health, while resulting in a far greater number of violations being detected and corrected, has resulted, quite naturally, in bringing under official scrutiny a greater number of the recalcitrant type of code violator. It is this type of violator, in ever-increasing number, with whom the City Attorney's office must deal in carrying out its phase of the code enforcement program for urban renewal.

The number of cases successfully terminated by the City Attorney's office during the fiscal year 1961-1962 represents an increase of 11% over those terminated during the preceding fiscal year. The past year has seen an increase of 47% over the preceding year in referrals to the City Attorney by the Department of Public Works and Department of Public Health of matters involving public nuisances. This represents a tremendous increase in the burden imposed upon the City Attorney from just this one facet of the City's operations.

In the fiscal year 1958-1959, litigation was necessary to the successful termination of only 37% of the nuisance abatement cases referred to the City Attorney. In 1959-1960, that figure increased to 44%. In 1960-1961, 66% of the cases were concluded by litigation and, in the fiscal year just completed, it was necessary to institute actions in 83% of the cases successfully terminated. As is to be expected, of course, the growing necessity for litigation imposes a greater burden on the City Attorney's office.

From time to time a nuisance abatement matter presents a situation wherein recourse to the use of the penal provisions of law appears appropriate. In such situation, however, before criminal proceedings can be maintained, it is necessary that the owner be arrested and formally charged. The City Attorney recently prepared a proposed ordinance for submission to the Board of Supervisors which would permit criminal prosecution of violators of our local ordinances after arrest and the issuance of a citation or notice to appear upon which the violator signs a written promise to appear at the time and place specified, without the necessity for actually taking the violator into physical custody and subjecting him to fingerprinting, photographing, booking and the other features attendant upon a criminal arrest. This ordinance is desired for use primarily in the case of violators of the Building, Housing, Health and related codes to permit utilization of the speedier process of criminal prosecution in enforcing compliance with such codes while at the same time minimizing the unpleasantness and inconvenience inherent in criminal proceedings.

The tabulation on the next page shows the number of abatement matters that were successfully terminated by the office of the City Attorney during the past fiscal year, whether such terminations were litigated or nonlitigated, the method of compliance, the number of referrals from the various departments, the number of actions filed during the year, the number of cases pending as of the close of the fiscal year and whether litigated or nonlitigated. Many of the pending cases shown as nonlitigated pertain to properties being brought into voluntary compliance by the owners after referral to the office of the City Attorney and concerning which the City Attorney has been requested by the enforcement department to defer legal action.

ABATEMENT MATTERS

July 1, 1961 - June 30, 1962

DEPARTMENT	REFERRALS DURING FISCAL YEAR	ACTIONS FILED IN FISCAL YEAR	CASES TERMINATED IN FISCAL YEAR			METHOD OF COMPLIANCE			CASES PENDING 6-30-62		
			Number	Liti- gated	Non- liti- gated	Demo- lition	Rehabil- ita- tion	Other	Number	Liti- gated	Non- liti- gated
PUBLIC WORKS	65	51	62	52	10	40	21	1	127	90	37
PUBLIC HEALTH	26	22	17	14	3	4	12	1	48	35	13
TOTAL	91	73	79	66	13	44	33	2	175	125	50

PARKING AUTHORITY

During the past fiscal year the Parking Authority has been principally engaged in two major parking projects; namely, the Neighborhood Parking Project and the Japanese Cultural and Trade Center Garage. These two projects have resulted in an increased number of hearings, both by the Authority and the Board of Supervisors, all of which have been attended by one of my deputies, and in the drafting of many resolutions and agreements.

The Parking Authority, after many public hearings, adopted a Neighborhood Off-Street Parking Program calling for 22 parking lots and 4 garages totalling 1,000 parking spaces in 15 neighborhood districts at an estimated cost of \$4,000,000.

Thus far the Board of Supervisors has approved the establishment of 5 neighborhood parking lots in the Eureka Valley, Outer Irving, Noe Valley, Geary and West Portal districts. Resolutions designating the sites and approving joint working agreements in connection with each of the above projects were prepared by this office as well as a legal opinion (No. 1584) advising the Board that it has authority to create special assessment districts for parking purposes.

The 800-stall garage beneath the proposed Japanese Cultural and Trade Center has been approved by the Parking Authority, which has recommended approval by the Board of Supervisors, subject to the following conditions: (1) That Unit B of the parking facility fronting on Fillmore Street be devoted primarily to serving the needs of the Fillmore Shopping District at rates comparable to those to be established by the Board for other neighborhood parking facilities, and (2) that the City's contribution to the project from the Special Off-Street Parking Fund be limited to not more than \$32,800 per year for a period not exceeding 30 years. The Finance Committee of the Board requested, and this office rendered, a written opinion (No. 62-34) advising that the City could legally accept the offer of the nonprofit corporation to finance and construct the garage and could legally pay the sum of \$32,800 per year from a special fund created for that purpose.

The expansion of the Fifth and Mission Garage, adding two floors and 500 parking stalls, was completed and opened to the public at formal ceremonies attended by public officials on November 21, 1961. The patent infringement problem discussed in the Annual Report of 1960-1961 of my predecessor concerning the installation and use of certain automatic parking devices and signal equipment was solved at a conference in my office, wherein it was determined that the revised specifications had eliminated the use of such patented equipment.

During the year, 28 meetings and 3 formal conferences of the Parking Authority and many meetings of the Board of Supervisors and its Finance Committee were attended by one of my deputies as well as numerous informal meetings and conferences in connection with the projects pending before the Authority.

SECRET

[illegible]

It is my hope that the results of this study will be of use to the community and to the government in the future. The results of this study will be of use to the community and to the government in the future.

REDEVELOPMENT AGENCY

Three deputies in my office during the past year have been assigned to the work of redevelopment. In addition, other deputies in the office have been required to assist in the work.

Two condemnation suits, Nos. 497475 and 498486, filed during 1960, embracing The Embarcadero-Lower Market Redevelopment Project Area E-1, involving 141 parcels of land and 632 defendants, have been concluded except for two parcels which were in the process of being acquired by negotiation at the end of the fiscal year. In the Western Addition Approved Redevelopment Project Area A-1, 665 parcels of land have been acquired and the condemnation proceedings concluded. The acquisition of 608 parcels of land in Diamond Heights Approved Redevelopment Project Area B-1 was completed in the prior fiscal year. Actions to Quiet Title and McEnerney actions respecting property in both Diamond Heights and Western Addition Projects have all been concluded except one suit to Quiet Title which is presently in the process of completion.

Lots in Blocks 233, 234 and 3714 abutting the foot of Market Street in The Embarcadero-Lower Market Redevelopment Project Area E-1 originally designated as part of the Ferry Park Area, and therefore not included in suits Nos. 497475 and 498486, are presently in the process of being acquired by the Agency. While 23 parcels have been acquired, 17 parcels remain to be acquired. Negotiations for the acquisition of the remaining 17 parcels are being conducted by the Redevelopment Agency.

The decision in Redevelopment Agency vs. Superior Court and Dion R. Holm, 195 C.A. 2d 591, settled the right of the City and County to require that its City Attorney act as legal counsel for the Redevelopment Agency in condemnation suits Nos. 497475 and 498486 described above. In that proceeding, the Redevelopment Agency sought issuance of a Writ of Mandate to force my predecessor, Dion R. Holm, to be ordered removed as attorney for the Agency to be replaced by another attorney chosen by the Agency staff. The District Court of Appeal in affirming the judgment of the Superior Court of the City and County of San Francisco, in a unanimous opinion ruled that by law and by the terms of the "Cooperation Agreements" entered into between the City and County and the Redevelopment Agency, the City and County had a nonterminable right to have its City Attorney conduct litigation and perform various other legal functions for the effectuation of the plans specified in the Agreements. Subsequently, the Redevelopment Agency sought to have the District Court of Appeal ruling reversed by the California Supreme Court. On November 8, 1961, the Supreme Court denied this petition for hearing.

The problems affecting redevelopment in San Francisco requiring the attention of my office are numerous and varied. They include reviewing and preparing legal documents and legislation, rendering opinions, conducting actions to quiet title, and suits in condemnation.

FRANCHISES

A. Litigated Matters

A major matter under litigation was settled by the City by the compromise of franchise litigation with Pacific Telephone and Telegraph Company. This matter is reported under the category "Appellate Litigation."

Also, in the course of the past year, a settlement was negotiated between the City and County of San Francisco and the Pacific Gas and Electric Company in two matters entitled "Pacific Gas and Electric Company vs. City and County of San Francisco," respectively, in which the Company had brought action against the City to recover the cost of relocating its facilities in street areas by reason of the construction, respectively, of the Civic Center Exhibit Hall and the Civic Center underground garage. These matters involved questions of the franchise and common law obligations of the Company. After numerous conferences, the Company accepted one-half of the amounts which it claimed in each action, and, in addition, agreed to a waiver of all of its claims for interest. Also, in the action regarding the Civic Center underground garage, responsibility for a portion of the claim was borne by the construction contractor. As a result of this compromise, which was approved by the Board of Supervisors, total claims of \$121,884.64, plus interest, were settled by payment by the City of \$56,460.89.

In addition, during the past calendar year, litigation was tried that had been brought by the City and County of San Francisco against American District Telegraph Company, which resulted in the judgment that said Company did not require a franchise for the reason that it did not, under the terms of its franchise, own facilities on the streets or other public places which were subject to franchise provisions.

B. Nonlitigated Matters

In addition, this office participated in the preparation of a draft of a proposed franchise for the Television Signal Corporation to engage in providing television signal booster services within the City and County of San Francisco. Conferences were held with City departments concerned, and provisions were drafted pursuant to recommendations of said departments.

REAL ESTATE DEPARTMENT

The Director of Property is the head of the Real Estate Department and in general has charge of the purchase, sale and lease of real property by and for the City and County of San Francisco and the management of the Exposition Auditorium. The City Attorney's office works very closely with the Real Estate Department in handling all its legal affairs in connection with the purchase of land and sale of surplus lands, vacation of all or portions of its streets, drafting or approving of all leases, resolving legal issues that arise from the operation of the Exposition Auditorium, preparing all condemnation suits for the acquisition of land and taking to trial all such suits not otherwise settled.

During the course of the fiscal year the City Attorney's office, at the request of the Director of Property, prepared all of the legal documents for the leasing or selling of the Lincoln Building property by the Board of Education at Market and Fifth Streets in the City and County of San Francisco which, if sold, would call for a minimum price of \$4 $\frac{1}{2}$ million and which, if leased, would call for a minimum rental of \$25,000 per month.

PUBLIC WELFARE DEPARTMENT

During the fiscal year 1961-1962 there was a marked decrease in the number of referrals from the Public Welfare Department arising from the failure of a legally responsible relative to contribute to the support of a person receiving Old Age Assistance. Only two such cases were referred during the year as compared to 94 referrals in the previous year. The decrease in referrals were largely due to the fact that the Legislature (in its 1961 session) revised Section 2181 of the Welfare and Institutions Code, substantially reducing the liability of a responsible relative to contribute to the support of an aid recipient.

The two cases mentioned were both referred to the City Attorney's office prior to the effective date of the revised scale, and, upon application of the new scale to the gross monthly income of the individuals involved, they were found to be meeting their legal liability. There remain 17 cases referred to the City Attorney before the start of the fiscal year involving relatives who have failed to contribute to the support of an aid recipient. In these cases the amounts involved are small enough so that the City Attorney has deemed it advisable to defer filing suit against the relative until the Public Welfare Department has an opportunity to re-evaluate the liability of the persons involved in light of the revised schedule of contributions. At the start of the fiscal year there were two court actions pending against responsible relatives. In both of these cases the relative involved has been making periodic payments to the Public Welfare Department toward elimination of the amounts sued for, and, in view of this cooperation, neither case has been set for trial.

The number of referrals of responsible relatives for failure to submit a statement of current financial status also decreased in the last fiscal year. These statements are necessary so that the Board of Supervisors can determine the extent, if any, of the relative's monetary liability for the support of the recipient of aid. Eighteen of these matters were referred to the City Attorney, as contrasted with 171 in the previous fiscal year. Of the 18 referred, 13 were terminated to the satisfaction of the Public Welfare Department in the course of the fiscal year. At the beginning of the year 22 cases were pending from previous fiscal years, and 6 of these were concluded during the year.

Throughout the fiscal year assistance was rendered to the Collections Division of the Public Welfare Department by the office of the City Attorney in the acceptance of bequests to the department amounting to \$8,000, and in matters involving claims of over \$14,000, for reimbursement of aid granted.

During the year the Public Welfare Department was represented by the City Attorney in an action brought against the Director of Public Welfare by the mother of an illegitimate child, who sued to rescind her signed relinquishment of the child after the infant had been placed with adopting parents. At the conclusion of a two-week trial, judgment was rendered in this matter in favor of the Director of Public Welfare. It was also necessary for the City Attorney to represent the Public Welfare Department in court several times during the year to prevent private litigants from obtaining confidential information from the files and records of the department.

SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. Pursuant to Section 159 of the Charter, the City Attorney is an ex-officio member of the Retirement Board and during the past year a deputy city attorney has attended each of the meetings of the Board as my authorized representative.

Throughout the year the City Attorney's office has been consulted practically on a daily basis, in connection with the multifarious legal problems that have arisen in the administration of the Employees' Retirement System, in determining who might be entitled to benefits thereunder and to what extent, in rendering formal opinions as duly requested, and in advising as to the legality of its investments which now total substantially in excess of \$250,000,000. Further, the City Attorney's office has, as in the past, represented the Retirement System both in the courts and before the Industrial Accident Commission. During the past fiscal year one of the Retirement Board's cases was taken as far as the District Court of Appeal where this office successfully sustained the position taken by the Retirement System in the case of Carrick, et al. vs. Retirement Board.

During the fiscal year 1961-1962 the Retirement System was confronted with the fact that apparently certain retired persons, while engaging in gainful occupations, had not reported the full extent of their income therefrom and as a result of which they were receiving greater retirement allowances than were justly due them. Through the City Attorney's office a number of practical suggestions were made to the Retirement Board for the purpose of strengthening its procedures and to prevent any further abuse thereof, and which suggestions were further implemented with several rules drafted by the City Attorney's office and approved and adopted by the Retirement Board. As a result of this and other action taken by the Retirement Board further abuse will be prevented and refunds are now being obtained in connection with many past overpayments.

WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California with the City Attorney's office representing the City and County of San Francisco and the San Francisco City and County Employees' Retirement System in hearings and other workmen's compensation matters before the Industrial Accident Commission of the State of California.

The hearings generally fall into three categories:

1. Where the City denies liability for the alleged injury or denies that the injury occurred; or
2. Where the City contests that disability resulted from the alleged injury; or
3. Where the City contests the duration of the disability or amount of permanent disability alleged.

The office of the City Attorney has appeared at 107 hearings averaging 8.9 per month, in which testimony was taken or evidence presented on behalf of the City and the Retirement System. The hearings varied in length from one hour to three days, averaging generally about one hour and a half.

Matters which are decided by the Industrial Accident Commission are subject to Petitions for Reconsideration and to review before the District Court of Appeal. The City Attorney's office has filed 14 Petitions for Reconsideration and six Answers to said petitions filed by the respective claimants, six Petitions for Writ of Review were filed in the District Court of Appeal, and two Answers to Petition for Writ of Review were filed. All of the necessary legal papers and documents in connection with the hearings, petitions, answers and writs are prepared in this office.

The City Attorney also represents the City and the Retirement System in the matter of subrogation of the claims of the Retirement System against a third party who has wrongfully caused injury to a City employee. In this way the Retirement System is often able to obtain reimbursement for the amount of compensation paid and medical expenses expended for the benefit of the employee as the result of his injury during the course and scope of his employment.

Where the injured City employee does not file suit on his own behalf, the City has the right to file an action against the third party causing injury. In the past year we have filed one suit and have five suits previously commenced pending. Additionally, our office obtained reimbursement by way of settlement without litigation in three other matters.

HEALTH SERVICE SYSTEM

The Health Service System of the City and County of San Francisco is administered by the Health Service Board. Pursuant to Section 172.1.1 of the Charter, the City Attorney is an ex-officio member of the Health Service Board and during the past year a deputy city attorney has attended every meeting of the Board as my authorized representative.

One major project of the Health Service System during the fiscal year 1961-1962 was the preparation and issuance of new Rules and Regulations to govern the operation of the System. This office assisted in the drafting of these Rules and Regulations, which became effective on March 1, 1962.

Also, the Board and its staff have frequently called upon this office for advice on the day-to-day administrative problems of the System. In addition, three formal opinions were issued to the Health Service Board during the year.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

The City Attorney in his capacity of county counsel represents the San Francisco Unified School District in negligence and other types of suits. Nine negligence suits were filed against the District during the past year, with prayers totaling \$678,000. All of these suits are pending. Two teachers' salary suits were filed during the year, both seeking writs of mandate to compel payment of salary since 1953. These suits resulted from adverse determinations on appeal in Mass v. Board of Education, 47 Cal. 2d 494; Mass v. Superior Court, 197 A.C.A. 461; and Di Genova v. State Board of Education, 57 A.C. 183. These suits have not been decided by the Superior Court as yet.

CONCLUSION

In your letter of August 10, 1962, requesting the annual report of the City Attorney, you listed the following six items on which you desired specific information:

1. Comment on the Progress of Capital Programs

This matter is inapplicable to the office of the City Attorney and no reply is made thereto.

2. Suggestions or Recommendations with Respect to the Activities of the City Attorney's Office or to City Affairs Generally

Throughout the report matters have been discussed in connection with the relation of the work of the City Attorney's office with the other City departments and City affairs generally, so that no additional specific reply is made.

3. Comparison of Expenditures for all Appropriations, other Than Those for Personal Services, with Original Budget Appropriations for 1961-1962

Except for a supplemental appropriation for litigation expenses and a minor supplemental appropriation for contractual services, materials and supplies and law books, this office stayed within the budget of 1961-1962.

4. Comparison of Revenues with Revenues Estimated in Budget of 1961-1962

The only revenues received by the City Attorney's office are interdepartmental transfers, so no comment on this item is necessary.

5. Comments on the Two Previous Items

No comment is necessary.

6. Statistics on Work Accomplished

Statistics as to the work accomplished have been set forth in detail in other portions of the report relative to the particular work or department of the City Attorney's office.

Respectfully submitted,

Thomas M. O'Connor

THOMAS M. O'CONNOR
City Attorney

DOCUMENTS TO THE CITY

1962 to 1963

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ANNUAL REPORT

of the

CITY ATTORNEY

CITY AND COUNTY OF SAN FRANCISCO

July 1, 1962 - June 30, 1963



Thomas M. O'Connor
City Attorney

CITY AND COUNTY OF SAN FRANCISCO

ANNUAL REPORT

of

CITY ATTORNEY

FISCAL YEAR 1962-63

THOMAS M. O'CONNOR

City Attorney

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I. LITIGATION SECTION

A. ACTIONS CONCLUDED

This office in the last fiscal year concluded by judgment, settlement or dismissal the following actions:

Tort actions: *

Municipal Railway	529	
Department of Public Works	111	
Other departments	<u>94</u>	734

Nontort actions* 157

Total 891

1. Detail of Tort Actions Concluded

(a) Municipal Railway

Disposition of the actions concluded for the Municipal Railway was as follows:

<u>Judgments</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Paid	58	\$ 961,293	\$ 162,078	16.9
Won or dismissed	<u>138</u>	<u>1,891,094</u>	<u>--</u>	<u>--</u>
Total	196	2,852,387	162,078	5.7
<u>Litigated Settlements</u>	<u>333</u>	<u>9,125,083</u>	<u>866,398</u>	<u>9.5</u>
Total Judgments and Litigated Settlements	<u>529</u>	<u>\$11,977,470</u>	<u>\$1,028,476</u>	<u>8.6</u>

* Tort actions are suits for personal injury or property damage. Nontort actions arise generally from activities of City boards, commissions and departments.

LAND OFFICE OF THE STATE OF NEW YORK

FOR THE YEAR 1901

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(b) Departments Other Than Municipal Railway

Disposition of tort actions concluded for all departments other than the Municipal Railway was as follows:

<u>Judgments</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Paid	26	\$ 208,561	\$ 28,650	13.7
Won or dismissed	69	2,081,624	--	--
	95	2,290,185	28,650	1.2
Litigated Settlements	110	1,974,419	151,048	7.6
Total Judgments and Litigated Settlements	205	\$4,264,604	\$179,698	4.2

(1) Public Works Department

Disposition of tort actions concluded for the Department of Public Works was as follows:

<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
111	\$2,182,622	\$125,376	5.7

Of the above cases, 65 involved sidewalk falls. Disposition of these cases was as follows:

<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
65	\$1,499,549	\$93,915	6.3

[illegible]

Journal of Management Studies, 19(1), 67-80.

(2) Other Departments

Disposition of tort actions concluded for departments other than the Municipal Railway and Department of Public Works was as follows:

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Water	23	\$ 590,717	\$ 5,526	0.9
Recreation and Park	22	210,926	9,842	4.7
Police	21	570,689	26,455	4.6
Public Health	8	394,114	1,841	0.5
S.F. Unified School District	7	192,865	7,068	3.7
Fire	6	115,046	3,340	2.9
Youth Guidance	1	105	--	-
Airport	2	1,319	--	-
Electricity	2	6,049	250	4.1
Library	1	52	--	-
Planning	<u>1</u>	<u>100</u>	<u>--</u>	<u>-</u>
Total	94	\$2,081,982	\$54,322	2.6

2. Recapitulation of Statistics on
All Tort Litigation Concluded

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentages</u>
Public Works	111	\$ 2,882,622	\$ 125,376	5.7
Other departments	<u>94</u>	<u>2,081,982</u>	<u>54,322</u>	<u>2.6</u>
Total	205	4,264,604	179,698	4.2
Municipal Railway	<u>529</u>	<u>11,977,470</u>	<u>1,028,476</u>	<u>8.6</u>
	734	\$16,242,074	\$1,208,174	7.4

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52	9	September 1961	897-1008	\$2.50
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53	11	November 1962	1121-1232	\$2.50
53	12	December 1962	1233-1344	\$2.50

3. Detail of Nontort Actions Concluded

Departments represented in the 157 nontort actions concluded were:

Assessor	2
Board of Permit Appeals	2
City Planning Commission	2
Civil Service Commission	8
Juvenile Court	1
Municipal Court	3
Police	8
Public Health	15
Public Welfare	10
Public Works	52
Real Estate	8
Recreation and Park	7
Redevelopment Agency	5
Retirement System	11
S.F. Unified School District	3
Tax Collector	3
Water Department	16
Youth Guidance Center	<u>1</u>
Total	<u>157</u>

The more numerous categories of nontort litigation concluded were:

Nuisance abatement actions	59
Eminent domain actions	22
Writs of mandate and review	25
Declaratory relief actions	9
Quiet title actions	5

Depositions taken numbered:

Railway cases	824
Non-Railway cases	<u>207</u>
Total	<u>1031</u>

4. Workmen's Compensation Proceedings Concluded

Workmen's Compensation proceedings concluded in the fiscal year are as follows:

Proceedings concluded	76
Petitions for reconsideration	9
Petitions for writ of review by District Court of Appeal	4
Subrogation claims concluded.	9

(Workmen's Compensation matters are discussed in Part VI, at page 27).

B. ACTIONS PENDING

Actions pending June 30, 1963, were as follows:

Tort Actions:

		<u>Prayers</u>
Municipal Railway	783	\$20,840,746
Public Works	212	9,040,038
Other Departments	132	14,908,495
Nontort Actions	<u>353</u>	
Total	1,480	

Detail of the 132 tort actions pending for departments other than Public Works and Municipal Railway is as follows:

SECRET

Journal of Management Education 30(6)p.789-804

...and the other is the fact that the system is not yet fully operational.

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

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<u>Department</u>	<u>Number</u>	<u>Prayers</u>
Airport	1	\$ 200,000
Chief Administrative Officer	1	65,000
County Clerk	1	200,000
Electricity	2	95,000
Fire	3	155,200
Health	9	5,550,591
Heat, Light and Power	1	50,000
Hetch Hetchy	1	125,000
Housing Authority	1	15,000
Jury Commissioner	1	110,542
Library	1	50,000
Palace of Legion of Honor	1	15,000
Police	38	4,868,039
Recreation and Park	28	478,200
Registrar	1	25,000
San Francisco Unified School District	19	987,800
Sheriff	2	101,000
Water	19	917,123
Youth Guidance Center	2	900,000
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Total	132	\$14,908,495
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Detail of the 353 nontort actions pending is as follows:

<u>Department</u>	<u>Number</u>
Airport	10
Assessor.	6
Board of Supervisors.	2
City Planning Commission.	2
Civil Service Commission.	14
Controller.	1
de Young Museum	1
Health Service System	1
Hetch Hetchy.	16
Juvenile Court.	2
Municipal Court	1
Palace of Legion of Honor	1
Parking Authority	2
Permit Appeals, Board of.	3
Police.	3
Public Health	13
Public Health (Abatement Cases)	35
Public Welfare.	10
Public Works.	9
Public Works (Abatement Cases). . . .	102
Purchaser	1
Real Estate	41
Recreation and Park	1
Redevelopment Agency.	9
Retirement System	23
San Francisco Unified School District.	6
Sheriff	1
Tax Collector	8
Water	35
Youth Guidance Center	4
Total	353

C. NUISANCE ABATEMENT ACTIONS CONCLUDED AND PENDING

Nuisance abatement litigation arises by reason of failure of property owners to carry out administrative orders of the Public Works and Public Health Departments relating to the building and health laws. Abatement matters are discussed further in Part V, at page 24.

The following tables show the status of nuisance abatement actions at the end of the fiscal year:

Cases Terminated June 30, 1963

<u>Department</u>	<u>Referrals</u>	<u>Actions Filed</u>	<u>Litigated</u>	<u>Non- Litigated</u>	<u>Total</u>
Public Works	49	56	44	9	53
Public Health	13	15	15	5	20
Total	62	71	59	14	73

Method of Compliance in Cases Terminated

<u>Department</u>	<u>Demolition</u>	<u>Rehabilitation</u>	<u>Other</u>
Public Works	44	8	1
Public Health	7	12	1
Total	51	20	2

Cases Pending June 30, 1963

<u>Department</u>	<u>Litigated</u>	<u>Nonlitigated</u>	<u>Total</u>
Public Works	102	21	123
Public Health	35	6	41
Total	137	27	164

D. CLAIMS FILED AND SETTLED

Claims filed and settled during the year were as follows:

<u>Department</u>	<u>Filed</u>	<u>Settled</u>
Municipal Railway	2819	1550*
Public Works	339	50
Other Departments	487	184

*This number represents claims of over \$500 in the evaluation of which this office participated.

Table 1. Summary of data for the first 1000 cases.

Case No.	Age (yr)	Sex	Occupation	Duration of illness (yr)
1	45	M	Farmer	10
2	52	F	Homemaker	15
3	38	M	Teacher	8
4	60	F	Retired	20
5	42	M	Engineer	12
6	55	F	Nurse	18
7	35	M	Student	5
8	65	F	Homemaker	25
9	48	M	Doctor	14
10	58	F	Homemaker	16

Table 2. Summary of data for the next 1000 cases.

Case No.	Age (yr)	Sex	Occupation	Duration of illness (yr)
1001	40	M	Farmer	12
1002	50	F	Homemaker	14
1003	30	M	Teacher	6
1004	60	F	Retired	22
1005	45	M	Engineer	10
1006	55	F	Nurse	16
1007	35	M	Student	4
1008	65	F	Homemaker	24
1009	48	M	Doctor	13
1010	58	F	Homemaker	15

Table 3. Summary of data for the next 1000 cases.

Case No.	Age (yr)	Sex	Occupation	Duration of illness (yr)
2001	42	M	Farmer	11
2002	51	F	Homemaker	13
2003	32	M	Teacher	7
2004	61	F	Retired	21
2005	46	M	Engineer	9
2006	56	F	Nurse	17
2007	36	M	Student	3
2008	66	F	Homemaker	23
2009	49	M	Doctor	11
2010	59	F	Homemaker	14

Table 4. Summary of data for the next 1000 cases.

Case No.	Age (yr)	Sex	Occupation	Duration of illness (yr)
3001	41	M	Farmer	13
3002	53	F	Homemaker	11
3003	31	M	Teacher	9
3004	63	F	Retired	19
3005	44	M	Engineer	7
3006	54	F	Nurse	15
3007	34	M	Student	2
3008	64	F	Homemaker	20
3009	47	M	Doctor	10
3010	57	F	Homemaker	12

NOTE: Data were collected from a national survey of 10,000 cases of the disease. The data were analyzed using a computer program that calculated the mean, standard deviation, and correlation coefficients for each variable.

Detail on the claims settled for departments other than the Municipal Railway is as follows:

<u>Department</u>	<u>Number</u>	<u>Amount Paid</u>
Water	85	\$19,051.89
Public Works	50	7,993.90
Police	32	3,135.10
Recreation and Park	30	1,412.69
San Francisco Unified School District	15	867.97
Fire	11	1,158.47
Public Health	7	425.16
County Clerk	1	67.50
Tax Collector	1	43.23
Electricity	1	18.50
Registrar of Voters	<u>1</u>	<u>9.00</u>
Total	234	<u><u>\$34,183.41</u></u>

E. APPELLATE LITIGATION CONCLUDED

Appellate litigation concluded in the past fiscal year was as follows:

City and County of San Francisco v. Western Air Lines, Inc., 371 U.S. 953 [denying petition for writ to review decision in 204 C.A. 2d 105];

United Air Lines, Inc. (City and County of San Francisco, Intervenor) v. Civil Aeronautics Board, 309 Fed. 2d 238;

Siller v. Board of Supervisors of the City and County of San Francisco, 58 Cal. 2d 479;

Howard v. City and County of San Francisco, 205 C.A. 2d 602;

County of Tuolumne v. State Board of Equalization,
206 C.A. 2d 352;

City and County of San Francisco v. Meyer,
208 C.A. 2d 125;

Puckett v. City and County of San Francisco,
208 C.A. 2d 471;

Baldwin-Lima-Hamilton Corp. v. Superior Court,
208 C.A. 2d 803;

Lewis v. Linn, 209 C.A. 2d 394;

City and County of San Francisco v. Carraro,
213 A.C.A. 128 [City's petition for rehearing
granted and cause still pending];

Whoriskey v. City and County of San Francisco,
213 A.C.A. 424;

Martinez v. Cahill, 215 A.C.A. 920;

Woods v. Kilpatrick, 217 A.C.A. 373.

Decisions in the more important of these cases are discussed in other parts of this report. For page reference to a particular case see Appendix A.

Summary of Appellate Cases

<u>Department</u>		<u>Court</u>
Civil Service Commission	1	District Court of Appeal
Health Department	1	District Court of Appeal
Municipal Court	1	District Court of Appeal
Municipal Railway	1	District Court of Appeal
Planning Commission and Board of Supervisors	1	Supreme Court
Police Department	2	District Court of Appeal
Public Utilities Commission	4	United States Supreme Court (1) U. S. Court of Appeals(D.C.)(1) District Court of Appeal (2)
Public Works	1	District Court of Appeal
Recreation and Park	1	District Court of Appeal

Statement of the Board of Directors of the
City of New York

for the year ending December 31, 1900

and for the year ending December 31, 1901

and for the year ending December 31, 1902

and for the year ending December 31, 1903

and for the year ending December 31, 1904

and for the year ending December 31, 1905

and for the year ending December 31, 1906

and for the year ending December 31, 1907

and for the year ending December 31, 1908

and for the year ending December 31, 1909

and for the year ending December 31, 1910

and for the year ending December 31, 1911

and for the year ending December 31, 1912

and for the year ending December 31, 1913

and for the year ending December 31, 1914

and for the year ending December 31, 1915

and for the year ending December 31, 1916

and for the year ending December 31, 1917

and for the year ending December 31, 1918

and for the year ending December 31, 1919

and for the year ending December 31, 1920

and for the year ending December 31, 1921

II. LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

In the last fiscal year the City Attorney rendered 74 legal opinions, 23 of which were letter opinions. The opinions are listed in Appendix B. They were rendered as follows:

<u>Department</u>	<u>Opinions</u>	<u>Letter Opinions</u>
S. F. Unified School District	1	
Board of Supervisors	17	11
California Palace of the Legion of Honor	1	
Chief Administrative Officer	1	
Civil Service Commission	1	1
Controller	1	1
Coroner		1
de Young Museum		1
Finance and Records	2	
Fire	2	
Hotel Room Tax Board of Review	1	1
Housing Authority	3	
Library Commission	1	
Municipal Court	1	
Parking Authority	1	
Police Department	4	
Public Defender		2
Public Health	2	1
Public Utilities Engineering Bureau		1
Public Works	6	2
Recreation and Park	2	1
Retirement System	4	
Total	<u>51</u>	<u>23</u>

III. LEGISLATIVE SECTION

A. BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

The City Attorney is legal adviser to the Board of Supervisors, and a deputy representing this office attends all meetings of the Board and its committees for the purpose of rendering legal advice and assistance to the Board in its deliberations and in the performance of its legislative, administrative and quasi-judicial functions. In addition to the oral advice and opinions rendered in the course of this representation, this office rendered 28 formal written opinions to the legislative body.

Under the Charter, the City Attorney is required to approve all ordinances enacted by the Board of Supervisors, and pursuant to this function this office either prepared or reviewed and approved the 301 ordinances that were enacted by the Board during the year. A substantial number of the 871 resolutions that were adopted by the Board during the year were prepared or reviewed and approved by this office. The 20 proposals for the amendment to the Charter of the City and County considered by the Board during the year were drafted or reviewed and approved by this office.

B. CALIFORNIA STATE LEGISLATURE

The California State Legislature hold its regular session during the first six months of 1963. A deputy from this office was in attendance in Sacramento full time. Of the almost 5,000 bills introduced and subsequently amended at this session, the deputy processed 485 Senate bills and 979 Assembly bills, a total of 1,464 bills, and forwarded them to the various city departments for their recommendation and action. 264 of these bills, which concerned matters primarily of a legal nature, came directly to this office for processing and analysis. In addition, various other bills relating to matters of a general municipal nature and in which the City and County was particularly concerned, as well as those bills of which department heads sought advice and which had been directly referred to them were reviewed.

TO: DIRECTOR, FBI (100-374301) FROM: SAC, NEW YORK (100-100000) (P)

Re New York airtel to Bureau dated 1/11/61, captioned as above. The Bureau is requested to advise the New York Office of any information received from the Department of Defense, or any other source, which might be helpful in the investigation of the above-captioned matter. The New York Office is requested to continue its investigation and to report the results thereof to the Bureau as soon as possible.

The New York Office is requested to advise the Bureau of any information received from the Department of Defense, or any other source, which might be helpful in the investigation of the above-captioned matter. The New York Office is requested to continue its investigation and to report the results thereof to the Bureau as soon as possible.

CONFIDENTIAL

The New York Office is requested to advise the Bureau of any information received from the Department of Defense, or any other source, which might be helpful in the investigation of the above-captioned matter. The New York Office is requested to continue its investigation and to report the results thereof to the Bureau as soon as possible.

An analysis was made of each bill presented to the State Legislative Committee, of which the City Attorney is a member, by the City Attorney or a member of the staff.

Many important measures were reviewed and digested by this office during the 1963 session. However, Senate Bills 42, 43, 44, 45 and 47 setting up the liability of the City and County for negligent acts while performing certain governmental activities were given highest priority. Each change in these bills as they were processed through the Legislature was studied. The deputy in Sacramento attended and participated in all conferences and meetings held by representatives of public entities on the subject matter of these bills and made appearances before the legislative committee urging the changes recommended by this office and was successful in a number of instances. This legislation will become effective on September 20, 1963 and will have a real impact upon the liability of the City and County of San Francisco and will provide additional classes of damage claims. This office will be studying and analyzing the effect of the legislation in collaboration with other public entities and the state so that changes may be recommended where they are deemed needed.

[illegible]

IV. PUBLIC UTILITIES SECTION

A. GENERAL

The Public Utilities section of the City Attorney's office carries out legal functions for the Public Utilities Commission and its departments, including the San Francisco International Airport, Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau, Bureau of Light, Heat and Power, Water Department, and the Municipal Railway. These legal functions consist of services in the following basic categories: (1) Conduct of litigation not only before the courts but also before governmental administrative agencies; (2) Formal and informal advice to the Commission and the personnel of the various departments; and (3) The preparation and approval of legal instruments. Besides specific assignments under these categories, a general review is conducted of legislation, court opinions, administrative rulings, and other legal matters and their possible effect upon the broad scope of the City and County's utility operations.

B. AIRPORT

1. Litigated Matters

As reported in the previous year, the City and County of San Francisco had succeeded in the California State District Court of Appeal in securing affirmation of a judgment in its favor against Western Air Lines, Inc., for the sum of \$214,385.74, representing disputed rates and charges which had been paid under protest by Western between 1951 and 1957. The California District Court of Appeal denied Western's petition for rehearing of said appeal; and, during the past fiscal year, the California Supreme Court also declined to grant a hearing to Western, thereby leaving undisturbed the favorable judgment of the Superior Court. Thereupon, Western petitioned the United States Supreme Court for a writ of certiorari, which petition was also denied, and, thereupon, the judgment in favor of the City and County and against Western became final for all purposes. The favorable determination of this litigation has confirmed the propriety of the City and County's rate schedule not only for the past period concerned, but has established future precedent regarding the validity of Airport rates and charges.

Other litigation which continued during the past year was the action filed April 20, 1962, in the San Francisco Superior Court and entitled "Field v. City and County of San Francisco." This action had been brought against the City by certain property owners adjacent to the Airport, who had prayed for \$200,000 for an alleged nuisance consisting of the asserted proximity of air-line operations to their property. The action also seeks to restrain use of the runway in question. A general and special demurrer to all counts of said complaint and a motion to strike

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were filed by the City and County, and the Superior Court issued a ruling sustaining in part the demurrers of the City and County and granting the motion to strike, with leave to plaintiffs to amend their complaint. The plaintiffs, pursuant to this leave, have subsequently filed amendments. Further pleadings thereto will be filed by the City.

Following the close of the fiscal year, 59 additional residents of Millbrae, each of whom had previously filed a claim upon the Airport noise basis, joined in a complaint filed in the Superior Court of San Francisco. In general, the complaint seeks relief upon all of the same grounds set forth in the Field case. Each plaintiff prays for damages in the amount of \$57,500, resulting in a general prayer in the amount of \$3,339,250.00.

The legal proceeding respecting assessment and taxation of Airport land by San Mateo County is discussed in Part VII Designated "Taxation Section" of this report at page

In addition, other items of litigation involving the Airport included 14 personal injury actions, one action in eminent domain, and one proceeding for injunction.

(a) Airline Route Proceedings

1. San Francisco-New York Nonstop Case. In the course of the past year, the City and County obtained a favorable determination of the San Francisco-New York Nonstop case which had been brought in the United States Court of Appeals for the District of Columbia by certain airlines that had objected to the establishment of a third transcontinental nonstop carrier between San Francisco and New York. On October 11, 1962, the United States Court of Appeals sustained the ruling of the Civil Aeronautics Board which had granted said nonstop authority between San Francisco and New York, thereby confirming the position maintained by the City and County before the Board and the Court, and securing the permanent establishment of a third transcontinental nonstop carrier between San Francisco and New York.

2. San Francisco-Oakland Helicopter Case. This proceeding in the past year was instituted by the grant by the Civil Aeronautics Board of an expedited hearing to determine whether public convenience and necessity require helicopter air service of persons, property and mail in the San Francisco-Oakland Bay Area. The City and County prepared a complete set of exhibits and participated in the hearings which were conducted in San Francisco last April, following which briefs were filed with the examiner, supporting the certification of such permanent helicopter service. The decision of the examiner of the Civil Aeronautics Board is expected within the near future.

2. Nonlitigated Matters

During the course of the year, this office participated in the general readjustment of arrangements with lessees and concessionaires necessitated by the impending opening of the South Terminal Building. In this connection, a uniform lease of space in the building was prepared and its execution supervised for each of the airline tenants affected, which includes American Airlines, Japan Air Lines, Western Airlines, Pan American Airlines, West Coast Airlines, Pacific Southwest Airlines, Qantas, Lufthansa and Trans World Airlines.

In addition, concession leases have been amended in order to reflect the addition of new space by the construction of the South Terminal Building. Other leases prepared included two base leases for airline tenants, another for Pier C, a draft of lease for the Post Office Department, a lease to be put out to bid for an airline tenant, a storage tank lease, a lease for an office building, and a lease of room space in Pier E. Existing leases or contracts were, in thirteen instances, amended by the insertion of new terms and conditions pursuant to the consent of the lessee or concessionaire. A new agreement which was prepared in the course of last year was a new form of contract for ground transportation services.

In connection with an aeronautical accident at the Airport, this office assisted in the investigation and attended Civil Aeronautics Board meetings.

This office supervised the legal arrangements and prepared extensive documentation in connection with the acquisition by the City of a beneficial ownership of all the common stock of the San Francisco Airport Improvement Corporation, a non-profit corporation which has been formed to assist the progress of projected Airport improvements.

Also, in the course of the year this office assisted in preparing amendments of Airport rates and charges and of Airport rules and regulations, reviewed and approved many insurance policies and other legal documents, as required by Airport operations, and advised upon such problems as airport drainage and easements. In addition, rules and regulations and a permit system were also developed in connection with the use of the Airport by intrastate air carriers.

... 1946 ...

C. HETCH HETCHY WATER SUPPLY, POWER
AND UTILITIES ENGINEERING BUREAU

1. Litigated Matters

Major litigation which had been instituted by the City and County in the previous fiscal year consisted of nine anti-trust cases filed in the United States District Court for the Northern District of California, Southern Division, seeking treble damages by reason of overcharges for electrical equipment sold by manufacturers to the City and County in connection with the construction of the Cherry Power Project and other utility enterprises.

As previously reported, said purchases amounted to approximately \$6,000,000. The firms involved were indicted by the Federal grand jury in Philadelphia and they, and in certain instances their officers, pleaded guilty and nolo contendere to criminal charges that they had violated the anti-trust laws. The Philadelphia indictments charged a conspiracy which engaged in the fixing of prices, the allocation of markets, and the allocation of competitive bids to predetermine the low bidder on government sealed bids and other purchases. The conspiracies which were charged were nationwide in character and cover some twenty different product lines.

In the course of the last year, the United States courts, under the leadership of the Murrah Committee, have established a so-called "National Deposition Program" under which depositions for discovery and trial purposes are conducted simultaneously for 1,800 similar cases which have been filed against the electrical equipment manufacturers in all parts of the United States.

This office has been participating extensively in this nationwide deposition program in order to obtain further evidence sustaining the position of the City, and in this connection has prepared legal documents, summaries and memoranda as part of a coordinated nationwide effort by both the "National Institute of Municipal Law Officers' City Task Force on Bid-Rigging Damages" and the Plaintiffs' Hydroelectric Committee. Nationwide depositions have been attended in eleven different instances, at which interrogation of officers and employees of the defendant corporations has been conducted on behalf of the City and County.

On the local scene, this office is participating in a series of pre-trial conferences in the local federal court in order to settle the terms and conditions of the nationwide deposition program, and to formulate and clarify procedures in the pre-trial stages of the litigation.

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The first of the year was a very busy one for the school. The students were very active in their studies and in their extracurricular activities. The teachers were very busy in their classrooms and in their administrative duties. The school was very successful in its first year.

The second of the year was also a very busy one. The students were very active in their studies and in their extracurricular activities. The teachers were very busy in their classrooms and in their administrative duties. The school was very successful in its second year.

The third of the year was also a very busy one. The students were very active in their studies and in their extracurricular activities. The teachers were very busy in their classrooms and in their administrative duties. The school was very successful in its third year.

The fourth of the year was also a very busy one. The students were very active in their studies and in their extracurricular activities. The teachers were very busy in their classrooms and in their administrative duties. The school was very successful in its fourth year.

The fifth of the year was also a very busy one. The students were very active in their studies and in their extracurricular activities. The teachers were very busy in their classrooms and in their administrative duties. The school was very successful in its fifth year.

In the course of the year there was a final conclusion of the litigation which had been brought by the Allis-Chalmers Manufacturing Company against the City and County of San Francisco in the San Francisco Superior Court challenging the award of a bid for the installation of hydraulic turbines on the Canyon Power project to Baldwin-Lima-Hamilton Company. The basis of such challenge was that the bid of Baldwin-Lima-Hamilton, which had been the low bidder, was based upon the use of components manufactured in a foreign country. Allis-Chalmers asserted that the Baldwin bid was not responsive to the bid proposal, which specified the necessity for supplying domestic materials, in conformity with the "Buy American" law of the State of California.

In defending the validity of the purchase, the City and County relied upon certain provisions of the treaties of the United States Government, including the multilateral GATT trade agreement, which were asserted to supersede the effect of the State "Buy American" statute and compel acceptance of a so-called "foreign bid."

After a trial of the matter on the merits, the San Francisco Superior Court announced its intention to hold the bidding procedure invalid as not specifically contemplating the possibility of a "foreign bid," although at the same time it inferentially upheld the validity of submitting a foreign bid pursuant to a revised procedure. Baldwin-Lima-Hamilton Corporation then filed a petition for writ of prohibition in the California Supreme Court. This petition was transferred to the District Court of Appeal for decision and, after briefing and argument in which the City and County joined, the District Court of Appeal concurred with the Superior Court that the bid proposal was invalid. Petitions by all parties to the California Supreme Court for a hearing were denied, and thereupon the matter was heard further in the San Francisco Superior Court which, on May 29, 1963, issued its final judgment invalidating the bid proposal. This judgment has become final and, pursuant to its finality, the call for new bids on hydraulic turbines was initiated, with a proposal specifically recognizing the possibility of the operation of treaties superseding the "Buy American" statute.

The bid opening occurred after the close of the fiscal year and disclosed that Hitachi of New York, Ltd., a Japanese concern, was low bidder by some \$226,000. The City Purchaser, awarding officer in this bidding procedure, has made his award of contract to Hitachi.

The legal proceeding respecting assessment and taxation of San Francisco's water rights by Tuolumne County is discussed in Part VII of this report designated "Taxation Section" at page 29.

Also, one eminent domain action was handled involving Hetch Hetchy Department property in Tuolumne County.

The first part of the report deals with the general situation of the country. It is a very interesting and informative study of the country's development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's development.

The second part of the report deals with the economic situation of the country. It is a very interesting and informative study of the country's economic development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's economic development.

The third part of the report deals with the social situation of the country. It is a very interesting and informative study of the country's social development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's social development.

The fourth part of the report deals with the political situation of the country. It is a very interesting and informative study of the country's political development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's political development.

The fifth part of the report deals with the cultural situation of the country. It is a very interesting and informative study of the country's cultural development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's cultural development.

2. Nonlitigated Matters

Matters of major concern to this office during the past year have been the negotiations and proceedings preparatory to the construction of the new Don Pedro Dam Project, which is being undertaken in cooperation with the Modesto and Turlock Irrigation Districts.

In this connection, during the past year there were continuing extensive negotiations relating to the drafting of a fourth agreement between the City and the Modesto and Turlock Districts relative to their combined operations on the Tuolumne River. This fourth agreement relates particularly to the extent of participation of each of the parties in the construction of the new Don Pedro Dam and Reservoir. Drafts of the form of the agreement were prepared, and negotiations and study are continuing.

Concurrently, this office also participated in an effort by the Districts to reach an agreement in connection with this project with the California State Department of Fish and Game relative to the amount of water releases which are asserted by that department to be necessary for the maintenance of the salmon fishery below La Grange Dam. While the City and County is not a party to the proceedings, this office assisted at the hearings conducted before a presiding examiner of the Federal Power Commission, which resulted from the refusal of the Fish and Game Commission to accept an agreement on this matter which had been recommended by its staff. One of the primary witnesses in this proceeding was George Burr, Assistant General Manager of the Water Department. The preparation of his testimony before the Commission examiner, which testimony was required to be submitted in writing, was effected in consultation with this office. Also, this office assisted extensively the two Irrigation Districts on the voluminous legal briefing which has been presented in connection with this matter and, likewise, in their exceptions to the presiding examiner's initial decision.

Another important matter consisted of the review of the many bills and amendments relating to water, power and municipally owned utilities which were introduced at the Biennial General Session of the California Legislature. One hundred and seventy-five drafts thereof were made the subject of separate written analysis, and weekly conferences were attended with the Hetch Hetchy and Water Department staffs during the duration of the legislative session.

A further major matter which was the subject of work during the year was the proposed merger of the Water Department and the Hetch Hetchy Project into a single Department of Water and Power, which necessitated a revision of Charter Section 122. This office prepared the Charter amendment authorizing said merger prior to the completion of the Hetch Hetchy Project and, upon its adoption by the people, prepared the necessary resolution and ordinance to effectuate the merger to take place as of September 1st of the current fiscal year.

Other legal work performed for this department included review of claims, bonds, insurance policies, permits, and other legal instruments in connection with the various Hetch Hetchy and Utilities Engineering Bureau projects, particularly those connected with the South Terminal Building and the enlarged Airport development. The numerous contracts entered into during the year in connection with such projects were subjected to the review and approval of this office.

D. BUREAU OF LIGHT, HEAT AND POWER

In the course of the fiscal year this office reviewed claims, particularly those dealing with the City's street lighting system, and engaged in continuing consultation with the employees of the Bureau regarding various legal matters.

E. WATER DEPARTMENT

1. Litigated Matters

During the fiscal year this office successfully defended the action Hsu v. City and County of San Francisco, which prayed for damages in the amount of \$556,500, and involved dispute over rates and charges for service to an apartment consumer. Jury verdict was rendered for the City, and an appeal by the plaintiffs is presently pending.

In addition, this office represented the Water Department in the defense of various claims by contractors to recover additional money for work done on department contracts, and also defended a number of actions involving claims of property damage arising out of alleged imperfections in the water mains and other pipes. The largest of these claims involved some \$6,000 in property damage, which arose out of the break of a 16" main at Clarendon Avenue and Olympia Way. The trial in this case resulted in a judgment in favor of the City.

Six actions in eminent domain were filed by the City of Mountain View to acquire easements of Water Department property for street purposes. These matters were concluded by payment to the City of \$30,000.

At the conclusion of the year approximately thirty-eight matters were pending. These included five actions covered by insurance for alleged damages due to blasting in the construction of the Sunset Reservoir; seven personal injury actions brought against the City and County; four actions arising out of alleged water main breaks, including one for a prayer of \$145,463.48; one action brought by the City for damages caused to its water main by a contractor; seventeen actions in eminent domain filed by various governmental entities in San Mateo, Santa Clara,

Alameda and San Francisco Superior Courts to acquire various interests in the Department's property, namely, for freeway, highway and public street purposes; and two actions to collect unpaid rents for the use of Water Department property. These matters are being prepared for trial.

2. Nonlitigated Matters

In the course of the past year this office consulted closely with the Water Department in the preparation and review of numerous contracts, leases and other legal instruments, and the review of claims both by and against the Department, permits, licenses, easements and numerous documents presented in connection with the many leases and permits involving Water Department properties.

Assistance was rendered to the Water Department and to the Director of Property in connection with the acquisition of 402 acres of watershed lands owned by Consumers Ice Company upstream from Crystal Springs Reservoir. To eliminate possible water contamination from adjoining lands retained by the said vendor, this office prepared an extensive set of covenants provided to run against such adjoining lands for the purpose of preventing such possibility of water contamination.

Another matter which occupied the attention of this office during the past year was the preparation and filing of an application for hearing before the Bay Area Pollution Control Board for variances to permit burning in connection with land clearing for the construction of the J. H. Turner Reservoir and Dam on San Antonio Creek. This office prepared and presented the matter before the Board and secured the variances and issuance of the permit needed, which will result in a saving of \$100,000 in construction costs.

Other legal services rendered to the Water Department in the course of the last year included examination of the legal rights regarding the 44-inch Crystal Springs pipeline, conferences regarding legal procedures necessary for the construction of Bay Division Pipeline No. 4, legal problems involved in the relocation of certain mains, preparation of a revocable permit in connection with the operation of the City's distribution system, legal study of disaster procedures, including fallout shelter signs, revision of contracts for the Lombard Reservoir improvement, extensions of agricultural leases, drafting of various share crop and farm leases and permits, checking insurance, clearing title of San Francisco to the San Lorenzo-Newark pipeline, and miscellaneous liability questions.

Aluminum and steel are the most common materials used in the construction of buildings. They are both strong and durable, and they can be used in a variety of ways. Aluminum is often used for window frames and doors, while steel is used for structural members and reinforcement.

2. Reinforcement

In the construction of buildings, reinforcement is used to increase the strength and durability of concrete. There are two main types of reinforcement: steel reinforcement and fiber reinforcement. Steel reinforcement is made of steel bars that are embedded in the concrete. Fiber reinforcement is made of fibers that are embedded in the concrete.

Reinforcement is used in a variety of ways in the construction of buildings. It is used to strengthen concrete walls, floors, and roofs. It is also used to reinforce concrete columns and beams. Reinforcement is used to increase the load-carrying capacity of concrete structures.

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F. MUNICIPAL RAILWAY

1. Litigated Matters

In addition to the personal injury and other tort matters arising in connection with the operation of the Municipal Railway which are covered in Part I of this report designated "Litigation Section," this office was also responsible for the conduct of other litigation. In the past year this office handled the litigation of McGill v. City and County of San Francisco, which was a writ of mandate by a limited tenure employee seeking restoration to his position after his dismissal by the Manager of Utilities. The Superior Court upheld the dismissal in question. An appeal by the employee concerned is pending.

In Howard v. City and County of San Francisco, 205 C.A. 2d 602, the District Court of Appeal upheld the City's position that the Municipal Railway was not estopped from denying proper filing of a claim in connection with an alleged accident.

2. Nonlitigated Matters

This office prepared contracts and other instruments and on many occasions engaged in consultation with the department on various legal questions. Among the agreements which were prepared was a contract with the Unified School District for the transportation of students, a contract for transit advertising on Municipal Railway vehicles, an agreement for the use by the Railway buses of the Trans-Bay Transit Terminal ramp, an agreement regarding changes in the Municipal Railway service necessitated by the construction of the planned Ferry Park, and interpretation by this office of the agreement, reported on in the prior year, which had been negotiated with the Bay Area Rapid Transit District governing the relocation of Municipal Railway and other utility facilities in connection with the construction of the Bay Area Rapid Transit System, particularly in connection with the Market Street subway. Two opinions were issued with respect to this subject.

Legal advice was also rendered regarding substituted service necessitated by the construction of public improvements, on the legal status of the carrying on by the Municipal Railway of a shuttle service at the Airport, lateral support in connection with a Municipal Railway right-of-way, fire extinguishers on buses, destruction of records, and possible effect of contemplated state legislation on Municipal Railway operations.

G. PUBLIC UTILITIES COMMISSION

The Public Utilities Counsel acts for the City Attorney as legal adviser to the Public Utilities Commission, and regularly attends meetings of the Commission in order to consult on current legal problems and to assist the Commission with the legal aspects of Commission business. He reviews and approves all contracts involving utilities, which number in the hundreds yearly. His advice is rendered daily to the Manager of Utilities and to all utility departments on an informal basis, in addition to the occasions when formal written opinions or letters are utilized. Under his direction this office frequently prepares, or assists with the preparation of, resolutions or other legal documents for the Commission and reviews and processes settlements which must come before the Commission for approval in litigated matters involving utility departments.

H. MANAGER OF UTILITIES

This office also serves as legal adviser to the Manager of Utilities on disciplinary proceedings which he conducts involving employees of the various utility departments. In cooperation with the Manager, steps are taken to assure that every procedural right granted by the Charter is preserved to the employee concerned and to the public. In the course of the past year fifteen disciplinary hearings were advised on and attended by this office.

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V. URBAN RENEWAL - NUISANCE ABATEMENT ACTIONS

Statistics concerning abatement and condemnation of public nuisance matters are set out in Part I designated "Litigation Section" at page 8.

The legal work involved in the elimination of unsafe condition of buildings continued to receive priority treatment by this office during the fiscal year. During the year there was a greater degree of voluntary compliances with the building and health laws and elimination of public nuisances without the necessity of referral to this office for legal action. Nevertheless, despite the increasing degree of voluntary compliances, there was refusal or neglect to comply with the requirements of the code enforcement departments in 62 cases which were referred to this office for legal action during the fiscal year.

73 abatement cases were terminated during the fiscal year. Advice by this office to the property owner of the imminency of legal action, followed by conferences in some instances, resulted in voluntary compliance without the necessity of filing legal action in 14 of these cases. In the remaining 59 cases, compliance with code requirements and elimination of health or safety violations was arrived at only after suit was filed and the matter was litigated in the Superior Court. The mode of compliance is set forth in Section I. 164 cases were pending at the conclusion of the fiscal year, 137 are in various stages of litigation and the balance of 27 cases represent for the most part properties which are voluntarily being brought into compliance with the law by the owner. In addition, at the close of the fiscal year, further steps in 54 of the litigated cases were being deferred at the request of the referring department by reason of the property owner's progress toward compliance.

This office prepared for submission to the Board of Supervisors two ordinances designed essentially for use in connection with enforcement of local Building, Housing, Health and Fire laws. The first ordinance authorized the issuance of a notice to appear to a person arrested for misdemeanor ordinance violation, whereby a person so arrested could sign a promise to appear in court at the time and place designated in the notice to answer to the charge specified. By signing such promise the person charged could avoid the usual concomitants of an arrest while at the same time public authority could utilize the penal provisions of law in enforcing the Municipal Code. The second ordinance designates certain city officers and employees as peace officers for the purpose of enforcing those ordinances within the jurisdiction of their respective departments. The second ordinance is designed to permit the issuance of notices to appear by those city officers and employees primarily concerned with the enforcement of the particular ordinance being violated. Both ordinances are presently under study by a committee of the Board of Supervisors.

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As a result of an ordinance prepared by the City Attorney and passed recently by the Board of Supervisors, the City Attorney is now authorized and directed to dismiss injunction proceedings against public nuisances upon notification by the Director of Public Works or Director of Public Health that the building has been restored to compliance with the law or demolished, and that legal proceedings are no longer required. This ordinance will be beneficial to the owners of property who have complied with the law, will conserve the time of this office and the Board of Supervisors, and will eliminate the needless expense of repeated publication of ordinances in this type of case.

During the past fiscal year, one appellate matter involving a nuisance abatement action instituted by this office was decided. In that case, City and County of San Francisco v. Meyer, 208 Cal. App. 2d 125, the City obtained a judgment finding that a building converted from three flats into a 12-unit apartment house, without a building permit, was a public nuisance, and enjoining its continued use and ordering its demolition unless the owner within 60 days restored it to a condition fit for occupancy. In affirming the judgment of the Superior Court in the City's favor, the decision of the District Court of Appeal announced procedures and principles important to the progress of the urban renewal program.

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VI. SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM

A. RETIREMENT BOARD PROCEEDINGS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. Pursuant to Section 159 of the Charter, the City Attorney is an ex-officio member of the Retirement Board and during the past year a deputy city attorney has attended each of the weekly meetings of the Board as my authorized representative.

Specific assignment was made during the year of another deputy to act for this office as attorney for the Retirement System. Throughout the year this deputy has been consulted on an almost daily basis in connection with the many and varied legal problems involved in the operation of the Retirement System. This deputy also attends each of the weekly meetings of the Retirement Board, cross-examines witnesses and, pursuant to an ordinance granting the power of subpoena to the Retirement Board, produces and examines witnesses--all with a view to full presentation of all pertinent facts to assist the Board in making its decisions. During the year this deputy has prepared for and participated in the presentation of approximately 62 cases before the Board, several of which cases required several hearings to complete.

In addition, this office is called upon to advise the Board as to the legality of its investments and, in particular, must review and analyze the voluminous documents involved in the purchase of bonds and other similar securities purchased by the Board.

This office represents the Retirement System both in the courts and before the Industrial Accident Commission. Most of the litigation involving the Retirement System and the Retirement Board concerns the determination by the court as to who is entitled to benefits under the Retirement System or the extent of such benefits. 4 such cases were litigated and terminated during this fiscal year. Also, during the year this office commenced an action in the Superior Court, on behalf of the Retirement System, to recover pension payments made to a retired person who, while engaging in gainful occupation, had not reported the full extent of his income therefrom and as a result had received a greater pension than that to which he was justly entitled. This action is presently pending and is the precursor of similar actions which will be processed before the Retirement Board and later, if necessary, through the courts.

ORIGINAL ARTICLES

THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., MAY 1, 1914

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B. STATE INDUSTRIAL ACCIDENT COMMISSION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California for industrial injury to City employees. The City Attorney's office represents the City and County of San Francisco and the San Francisco City and County Employees' Retirement System in hearings and other workmen's compensation matters before the Industrial Accident Commission of the State of California. Hearings before the Commission are held where the City denies liability for the alleged injury or denies that the injury occurred, or where the City contests that disability resulted from the alleged injury, or where the City contests the duration of the disability or amount of permanent disability alleged.

The work load of this assignment increased to a great extent during this year due to the number of hearings and the time required for adequate preparation and presentation of evidence. This office has appeared at 76 hearings, averaging 6.2 hearings per month, in which testimony was taken or evidence presented on behalf of the City and County and the Retirement System. The hearings varied in length from one hour to three days. Hearings were set in the cities of Sacramento, Guerneville, Stockton, Oakland, Redwood City and San Jose.

Claims were filed at the Industrial Accident Commission by employees of the following departments, during the year: Assessor, Fire, Health, Municipal Railway, Park and Recreation, Police, Public Defender, Public Welfare, Public Works, School, Sheriff, Superior Court, Tax Collector, and Water.

Matters which are decided by the Industrial Accident Commission are subject to petitions for reconsideration and to review before the District Court of Appeal. This office filed 3 petitions for reconsideration and 6 answers to petitions for reconsideration filed by applicants. 3 petitions for writ of review were filed in the District Court of Appeal and 1 answer to petition for writ of review, and 1 answer to petition for hearing before the Supreme Court of California.

The City Attorney also represents the City and the Retirement System in the matter of subrogation of claims of the Retirement System against third parties who wrongfully cause injury to City employees, in order to obtain reimbursement for the amount of compensation paid and medical expenses expended for the benefit of such employees resulting from injuries sustained during the course and scope of their employment. Where an injured City employee commences an action in his own behalf against a third party causing his injury, the City has the right

to intervene in order that the benefits paid to the City employee because of his injury may be recovered. During the past year, this office successfully completed 1 suit in intervention and 2 additional suits are pending. Where an injured City employee does not file suit on his own behalf, the City has the right to file an action in its own behalf against the third party causing the injury. In the past year this office has recovered judgments in 4 independent suits and obtained reimbursement by way of settlement without litigation in 8 other subrogation matters.

VII. TAXATION SECTION

The decision of the California District Court of Appeal in County of Tuolumne v. State Board of Equalization, 5 Civil No. 70, 206 C.A. 2d 352, was issued on August 1, 1962. This litigation involving the assessment and taxation of San Francisco's water rights on the Tuolumne River was concluded during the fiscal year on the compromise basis discussed in my report for the previous year. In this fiscal year San Francisco received \$722,950.04 by way of refund of taxes paid under protest and interest thereon.

The background and issues involved in this case were set out in my report for the previous fiscal year as follows:

"County of Tuolumne v. State Board of Equalization, 5 Civil No. 70, involves an annual tax of such potential magnitude as to have an appreciable effect upon rates and charges for water and power garnered in the Sierra Nevada by the San Francisco Hetch Hetchy Water and Power System. A decision in this case was handed down in May of 1962 by the District Court of Appeal for the Fifth Appellate District, San Francisco appearing therein as the real party in interest.

"Prior to 1914, the California Constitution provided that all property owned by municipal corporations such as San Francisco, wherever located, was wholly exempt from ad valorem taxation. In the first decade of this century, San Francisco selected the Tuolumne watershed as its source of water and power for future years, and initiated a vast program to develop the Tuolumne River and its tributaries for the benefit of Bay Area communities. During that early period San Francisco initiated legal, administrative and engineering procedures to establish valid claim to Tuolumne water. These procedures included filing of water rights by former Mayor James D. Phelan, by former City Engineer Marsden Mansen, and by the City and County of San Francisco as a corporate body politic. Additionally, San Francisco purchased, for a sum in excess of \$1,000,000, those lands and filings for water rights which had already been acquired by private individuals and corporations in the area of planned development.

"In those years of infancy of water development, concern gradually grew that water and power projects, particularly those of San Francisco in Tuolumne County and of Los Angeles in the Counties of Inyo and Mono, would result in substantial impairment of the local tax rolls of mountain counties by removing otherwise taxable properties from the requirement of making their tax

contributions to the mountain counties' economies. Solution of the problem was proposed in 1914 by way of a constitutional amendment which provided that all lands and improvements which were subject to taxation at the time they were acquired by local governments would continue to be taxable in the ownership of local government if they were located outside of the boundaries of the entity making the acquisition. The argument to the voters contained express reference to the Los Angeles and San Francisco projects as primary illustrations of the type of property tax result to be achieved by the amendment, and the measure was passed by the people.

"While San Francisco did not buy any fully developed water rights in Tuolumne County, its \$1,000,000 purchase did include certain privately-owned filings for water which were brought forward to completion as water rights, and San Francisco has relied upon these private filings to establish for itself an earlier priority date for its diversions of water than it could otherwise claim. These filings support, in part, present diversions of water, particularly for power purposes, at Cherry Dam and Eleanor Dam, the water being utilized to turn turbines at Cherry Powerhouse, after which the flow continues downstream to satisfy San Francisco's obligations to the Turlock and Modesto Irrigation Districts.

"In 1960, Tuolumne County levied an assessment upon all of San Francisco's water rights in that county in the amount of \$6,062,100, to produce a tax liability for the year of \$330,850. San Francisco appealed the assessment to the State Board of Equalization, which, after a full hearing, ordered the assessment reduced to the sum of \$1,214,000, to produce a tax liability of \$69,700. Said decision of the State Board of Equalization was taken to court by Tuolumne County by way of petition for writ of mandate compelling the administrative body to restore those assessments on water rights which it had reduced to zero amounts.

"After decision by the Superior Court affirming the Board's order, both San Francisco and Tuolumne took the case to the District Court of Appeal. The latter court also affirmed the State Board's decision, to the effect that only those water rights which depend for priority upon the privately-owned filings acquired by San Francisco are taxable; all others are exempt.

"Upon petition therefor, both Tuolumne County and San Francisco were granted rehearing of the initial District Court of Appeal decision, and said decision was clarified and reissued on August 1, 1962.

"In the interim period, during the year 1961, Tuolumne assessed all of San Francisco's water rights at \$9,819,000, to produce a tax of \$577,000. Again, upon petition by San Francisco to the State Board of Equalization, and after hearing, the assessment was ordered reduced to \$2,345,000, which would produce a tax in the amount of \$125,000. The allowed assessment increase was predicated upon increased use of water for power purposes at the new Cherry Powerhouse in that year. Tuolumne repeated its legal action of the prior year by again taking the matter into court.

"In 1962, Tuolumne assessed all of San Francisco's water rights in the amount of \$15,449,300, to produce a tax of \$898,359.27. Petition to the State Board of Equalization for equalization, adjustment and review was thereafter duly made by San Francisco.

"These, then, were the circumstances in which Tuolumne County and San Francisco found themselves at the time of the August 1, 1962, ruling of the District Court of Appeal, which decision expressly held that San Francisco's water rights predicated upon purchased filings are taxable and all of the balance of its water rights are exempt from tax. Remaining to each party was the right to petition the California Supreme Court for a final legal determination of the question involved. The stakes were high, for, if Tuolumne County were to persuade the Supreme Court that all of San Francisco's water rights were taxable, San Francisco's tax bill for each future year would be at least \$1,000,000, and could, with the advent of the Canyon Powerhouse, conceivably increase to \$1,500,000 per year. On the other hand, were San Francisco to achieve complete tax exemption of all of its water rights in Tuolumne County, the latter would lose taxable properties from its tax rolls, with a resultant decrease of anticipated tax revenues in the approximate amount of \$200,000 per year, at a 25 per cent assessment ratio.

"Thus, the justice of settlement of the total tax controversy between the litigants on the basis of the District Court of Appeal decision seemed apparent, and the Public Utilities Commission, together with the Board of Supervisors of Tuolumne County, adopted an agreement disposing of the entire matter. Both entities waived their rights to carry the case to the Supreme Court, and the District Court of Appeal opinion became the final decision controlling the issues therein adjudicated. Additionally, San Francisco consented to a scaling up of the assessment on taxable water rights to 25 per cent of full cash value, being \$3,000,000, and further waived its right to protest assessments upon its reservoir lands in Tuolumne County up to limits informally accepted.

"This final disposition of the entire matter is equitable to both counties, in that it reflects the spirit and purpose of the constitutional amendment voted into law by the People of the State in 1914, protecting from tax those water rights San Francisco filed upon in its own behalf and insuring taxation of those properties purchased by San Francisco from private owners. It is anticipated that the broad settlement brought to fruition in this case will carry forward into the foreseeable future, so as to preclude recurrence of litigation so detrimental to inter-county cooperation and harmony between Tuolumne and San Francisco.

National Exhibition Company v. City and County of San Francisco, Superior Court No. 508320, was reported as being on appeal in the last report. The case involved suit by the Giants to recover \$117,487.03 paid under protest as tax assessed upon its possessory interest in Candlestick Park baseball stadium. This case was dismissed by the District Court of Appeal upon petition of the National Exhibition Company that the issues were moot, it having filed covenants neither to enforce the judgment in its favor in the Superior Court nor to rely upon said judgment as a principle controlling any future litigation upon these issues. San Francisco retains the protested tax payments, and the parties are returned to the same status as though the suit were never filed.

San Mateo County Taxation of Airport Lands. The lands which the City and County of San Francisco owns in the County of San Mateo and uses for purposes of the International Airport were assessed for the year 1963-1964 at a substantially higher value than for the previous year by the San Mateo County Assessor. An assessment predicated upon a full cash value of some 4900 taxable acres in the amount of \$15,699,200 was placed upon the tax rolls, as compared to a market value of \$4,757,840 for the year 1962-1963. Increasing the appraised value of the property would result in an elevation of required tax dollars from \$94,153.28 in 1962-1963 to an estimated \$294,360 in 1963-1964. Reports of independent valuation experts retained by the Public Utilities Commission indicated that the amount of the increase was not justified.

After the close of the fiscal year, in consonance with resolutions of the Public Utilities Commission, San Francisco petitioned the State Board of Equalization for a hearing with reference to the complex valuation questions inherent in the new assessment. The matter was presented in Sacramento during three days of hearings. On August 23, 1963, the State Board of Equalization issued its Notice of Decision in the case finding that the full cash value of all of San Francisco's taxable airport acreage for 1963-1964 is \$13,689,540. This finding is \$2,009,660 less than the Assessor's opinion of value and indicates a tax reduction of approximately \$37,680 for the current year.

As of September 1, 1963, receipt of the transcript of proceedings before the administrative tribunal is awaited in order that the questions presented before the State Board of Equalization may be re-evaluated in the light of the record for recommendations by this office as to the appropriate course next to pursue.

VIII. RATE DEPARTMENT

A. GENERAL

Many issues required extensive participation before regulatory bodies, such as the California Public Utilities Commission and the Federal Power Commission by this office on behalf of San Francisco ratepayers. Every proposed increase in rates for utility services must receive thorough and impartial review in the public interest and, if deemed excessive, must be vigorously contested by this office.

During the past year this office was actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interest of ratepayers. The major portion of time spent by the office was directed toward natural gas and telephone matters before the respective regulatory agencies. The scope of these proceedings involved both rates and rules and regulations, and this office participated in 50 days of hearings to be discussed herein.

B. GAS

El Paso Natural Gas Company. These rate matters were reported on in the last annual report and the cases were continued in the current year.

The State of California at the present time receives 75 per cent of its entire natural gas supply from out-of-state sources, principally from El Paso Natural Gas Company. The average price at the California border for this gas has risen 119 per cent since the year 1947. El Paso Natural Gas Company, pursuant to existing law, was entitled to, and did, file increased tariffs with the Federal Power Commission for the period commencing with the year 1955. These rates have not been the subject of extensive hearings before the federal regulatory agency for the purpose of determining to what extent they are fair and reasonable.

Four dockets are consolidated for decision in the El Paso Natural Gas Company rate matters. The first of these four dockets, No. G-4769, was submitted to the Commission in May, 1962, for determination of an allowable rate of return on wellhead and production properties. The remaining three dockets, Nos. G-12948, G-17929 and RP 60-3, were submitted on the single issue of rate of return. All other issues on which actual rates will be established were continued in open hearing before the Commission, and finally submitted for determination in June of 1962. At the close of the fiscal year, a decision on this latter matter has yet to be rendered.

On October 19, 1962, Opinion No. 366 was issued by the Federal Power Commission on the rate of return issue, directing El Paso Natural Gas Company to refund (together with Opinion 326) 30 million dollars total in Docket No. G-4769 and an additional 48 million dollars on the rate of return portion only of Dockets Nos. 12948, 17929 and RP 60-3 to California consumers. The company has appealed this decision in the courts. The 30 million dollars has been paid to the California distribution companies for refund. The small consumer of natural gas in San Francisco should receive approximately a \$3 credit on his August, 1963, bill. A reduction in rates was also ordered in February, 1963, by the California Public Utilities Commission as a result of Opinion 366, which will amount to an annual savings of \$200,000 to the small San Francisco consumers as a group.

Area Rate Proceedings. These matters before the Federal Power Commission are of equal importance to the gas rate matters just discussed; this for the reason that the Federal Power Commission has in process of hearing dependent matters of how future gas rates will be ultimately determined at the producer level. For example, the first docket, No. AR 61-1, involves the Permian Basin area which supplies El Paso Natural Gas Company with the bulk of the gas it ultimately transports and sells to California gas distributing utilities.

A major factor in the aforesaid increase in the border price of gas has been occasioned by substantial raises in the price paid by the pipeline companies to the producers for out-of-state gas. Along with other California intervenors, the City Attorney's office has taken an active part in this case, attending 17 days of hearings. The hearings have been in progress over two years, with over 200 days of hearings completed, and at the close of the fiscal year it appears the case will not be submitted until sometime in September, 1963.

C. TELEPHONE

The most important development with reference to telephone rates in San Francisco has been the initiation by the California Public Utilities Commission of an investigation to review the operations and earnings of The Pacific Telephone and Telegraph Company, a Bell subsidiary. The investigation has been assigned Case No. 7409, and to date there have been 32 days of hearings in which this office participated. San Francisco joined with Los Angeles in requesting a reduction in the two metropolitan areas. The cities sponsored two witnesses and six exhibits in support of their position. San Francisco, with the highest density of telephones of any major areas in the state (over 8,000 phones per square mile), is now producing the highest return to the Telephone Company.

D. MISCELLANEOUS

Other matters in which this office participated included Case No. 7372 before the California Public Utilities Commission on Bidding Procedures, and Cases No. 7463 and No. 7464, involving railroad crossing protector devices and wherein a policy change by the Commission, which is being requested by the railroads, could financially affect the City in future years.

Assistance was also given other City departments in the investigation and review of garbage rates and towaway rates.

IX. OTHER SERVICES RENDERED

During the period of this report 206 contracts for the Public Works Department and 44 contracts for the City Purchaser's office were reviewed and approved. In addition, contracts for other departments which cleared through the Purchaser's office were approved as follows: Department of Public Welfare, 20 contracts dealing with use of hospitals and Community Chest services; Health Department, 20 contracts dealing with the care of indigents in private hospitals; Juvenile Court, 30 contracts dealing with services to be rendered in the homes of juveniles under the court's jurisdiction or with services of agencies to whose care juveniles have been committed. On behalf of the Health Service System, contracts under the various plans were completely revised prior to their execution for the 1963-64 fiscal year.

In addition, a number of leases and contracts were approved for the Real Estate Department and Recreation and Park Commission.

Of particular interest are four other contract matters. The first was a contract between the Art Commission and Mr. Henry Schubart who was hired as a professional administrator of the competition for the enhancement of the Civic Center. Another was the amendment to the agreement and lease with the State of California for joint participation in the rehabilitation of the Palace of Fine Arts. After many consultations and drafts a final agreement was reached which is awaiting approval of the Board of Supervisors so that it may be executed by the City officials. The third was the agreement for the operation of the concessions at the Zoo, Fleishhacker Playfield and Storyland by the San Francisco Zoological Society which is to run for ten years and covers all operations in these areas. All parties have concurred in its final terms and it has been executed by the Recreation and Park Commission and is presently awaiting approval of the Board of Supervisors. The fourth of these matters was a contract prepared for the Planning Commission for engaging the services of Arthur D. Little, Inc. to assist in the preparation of a community renewal program. The drafting of a number of resolutions preceded its preparation.

During this fiscal year the documents, ordinances and resolutions for the establishment of the new produce market were prepared and a favorable ruling obtained from the Tax Ruling Division of the Internal Revenue Service which assured sale of the bonds.

In addition to formal opinions issued, considerable advice was given to departments daily by telephone and in conferences. Written requests for advice, other than requests for formal opinions, were handled by written work assignments. During the fiscal year 221 such assignments were completed.

APPENDICES A AND B

APPENDIX A

DIGEST OF APPELLATE LITIGATION

(Part I of Report, page 9)

City and County of San Francisco v. Western Air Lines, Inc. [371 U.S. 953, denying petition for writ to review decision in 204 C.A. 2d 105]. See comment Part IV, page 14.

United Air Lines, Inc. (City and County of San Francisco, Intervenor) v. Civil Aeronautics Board, 309 Fed. 2d 238. See comment Part IV, page 15.

Siller v. Board of Supervisors of the City and County of San Francisco, 58 Cal. 2d 479. The power of the Planning Commission to grant a variance from the provisions of "one for one" Parking ordinance was affirmed by the Supreme Court after the District Court of Appeal, in 21 Cal. Reporter 636, had reached an opposite conclusion.

Howard v. City and County of San Francisco, 205 C.A. 2d 602. See comment Part IV, page 22.

County of Tuolumne v. State Board of Equalization, 206 C.A. 2d 352. See comment Part VII, page 29.

City and County of San Francisco v. Meyer, 208 C.A. 2d 125. See comment Part V, page 25.

Baldwin-Lima-Hamilton Corp. v. Superior Court, 208 C.A. 2d 803. See comment Part IV, page 18.

Lewis v. Linn, 209 C.A. 2d 394. Immunity of municipal judge for alleged slanderous remarks from the Bench sustained.

The following decisions involved rights and duties of the Civil Service Commission, officers or department heads with respect to City employees:

Puckett v. City and County of San Francisco, 208 C.A. 2d 471.

Whoriskey v. City and County of San Francisco, 213 A.C.A. 424.

Woods v. Kilpatrick, 217 A.C.A. 373.

INDEX OF OPINIONS RENDERED TO
CITY DEPARTMENTS DURING FISCAL YEAR 1962-1963

(See Part II of Report for Reference)

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
63-19	Board of Education	Contributions to Health Service System by San Francisco Board of Education on behalf of its employees.
62-35	Board of Supervisors	Bay Area Rapid Transit District; effect of certain counties withdrawing therefrom on the right of California Toll Bridge Authority to finance construction of rapid transit underwater tube; necessity of amendment to federal law.
62-38	"	Taxation; equalization; possessory interests in non-profit parking facilities.
62-39	"	Ordinance prohibiting discriminatory practices in certain housing because of race, color, religion, national origin or ancestry and creating Fair Housing Commission; whether state has pre-empted field by reason of existing state statute on subject.
62-40	"	Rescission; power of Board of Supervisors as to action previously taken.
62-45	"	Airport ground transportation agreement and parking lot lease; changes thereto; whether bid procedure required.
62-49	"	Grading permit and permission to improve streets and easements may be granted to subdivider before final subdivision map is approved.
62-55	"	Assessment district for maintenance of privately landscaped area lying within city and county.
62-56	"	Interpretation of word "temporarily" in charter section 141 re obligation of employee to discharge duties to which his chief may temporarily assign him.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
62-57	Board of Supervisors	Low-rent public housing; necessity of approval of proposed developmeny by electorate.
62-59	"	Advertising matter on parking meters.
L/62-8	"	Time limits applicable to submission to electorate of low-rent housing project.
L/62-12	"	May Chief Administrative Officer of City and County of San Francisco serve as a Director of the Golden Gate Bridge and Highway District.
L/62-13	"	Regarding agreement between San Francisco Bay Area Rapid Transit and City and County of San Francisco.
L/62-14	"	Golden Gate Bridge and Highway District; Controller and Chief Administrative Officer as ex-officio members of Board of Directors.
L/62-15	"	Hall of Justice; whether terms of bond issue required sale.
L/62-16	"	Moderate priced housing; prevention of future speculation.
L/62-17	"	Hall of Justice terms and date of sale.
L/62-19	"	Citizens Advisory Committee; urban renewal; legality of appointment; file No. 343-62.
63-1	"	Teacher who has also been employed as a part-time playground director may not withdraw retirement contributions made as a part-time playground director while continuing to work as a teacher.
63-5	"	Legal representation by city for city employee when charged criminally.
63-9	"	Replacement by Housing Authority of housing units demolished by reason of freeway construction.
63-10	"	Civil Service promotional examinations; application of charter section 147.1.
63-11	"	Off-street parking meter fund diverted to general fund; legality thereof.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
63-23	Board of Supervisors	Majority vote or two-thirds vote of Board of Supervisors necessary to amend section 360 of Health Code relating to equipment permissible in automatic laundries.
63-24	"	Right of city to waive its right to enforce liens for hospital care against after-acquired property of recipient of aid under Welfare and Institutions Code section 2603.
L/63-5	"	Amending section 105 of the City Planning Code; establishment of "P" district.
L/63-6	"	Regarding legislation regulating auctioneering; section 1259 of Police Code.
L/63-9	"	Resolution No. 246-63 relating to the appointment of additional personnel for the uniformed force of the Police Department.
63-20	California Palace of the Legion of Honor	Luncheon facilities at California Palace of the Legion of Honor; legality thereof and procedure required.
63-43	Chief Administrative Officer	Legality of tourist and convention booth in Union Square.
63-17	Civil Service Commission	Annual vacation of temporary employees; effect of anniversary date of appointment thereon.
L/63-7	"	Work records of former city employees; duties and liabilities of Commission when requested for information by prospective employers.
62-47	Controller	Board of Education; San Francisco Unified School District; legality of expenditure of public funds for transportation of school children other than handicapped children.
L/62-10	"	Liability of city and county for custodial care of a prisoner who while under sentence at county jail was committed by Superior Court to the Atascadero State Hospital.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
L/63-3	Coroner	Payment of burial expenses.
L/63-8	de Young Memorial Museum	Spanish monastery; question of disposal.
63-18	Finance and Records	Contractor buying or selling secondhand store fixtures required to obtain a permit and license therefor.
63-26	"	Recorder's records; legality of adding Assessor's block and lot numbers to reference system.
62-44	Fire Department	Legality of offer of reward by city for information leading to the arrest and conviction of persons turning in false alarms.
63-2	"	Limited tenure appointments; H22 Lieutenant, Bureau of Fire Prevention and Public Safety.
62-50	Hotel Room Tax Board of Review	Taxation; exemption; representatives of foreign countries exempt from hotel occupancy tax.
L/63-2	"	Hotel tax; application of tax to sample rooms.
62-37	Housing Authority	Validity and regularity of adoption of resolution No. 623-61 approving change of location of low-rent housing units of the Housing Authority of the City and County of San Francisco and approving selection of additional site for development of project Cal 1-18(13) and approving said project.
63-14	"	Validity and regularity of adoption of resolution No. 468-61 approving change of location of low-rent housing units of the Housing Authority of the City and County of San Francisco and approving selection of additional site for development of project Cal 1-18(10) and approving said project.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
63-15	Housing Authority	Validity and regularity of adoption of resolution No. 812-61 approving change of location of low-rent housing units of Housing Authority of the City and County of San Francisco and approving selection of additional site for development of project Cal 1-18(11) and approving said project.
63-27	Library Commission	Use of Alfred Fuhrman bequest by Library Commission for purchase of real estate to house branch library and for purchase of recordings in addition to printed materials on economic and political subjects.
63-6	Municipal Court	Municipal Court attaches; holiday proclaimed by Governor falling within vacation.
63-3	Parking Authority	Eligibility of members of Parking Authority staff for membership in Health Service System as a result of adoption of charter section 158.4.
62-54	Police Department	Motor vehicles for hire; procedure to be followed on application by motorized ricksha company for certificate of public convenience and necessity.
62-52	"	Auto wreckers; validity of license requirements of sections 1235 and 1237 of the Police Code; supplement to Opinion No. 1258.
63-4	"	Regulatory provisions of building and fire codes as pertaining to jurisdiction of Bureau of Building Inspection and Division of Fire Prevention and Investigation.
63-8	"	Residence requirements; auctioneer; whether auctioneers must continue to maintain residence in city and county while engaged in business of auctioneer.
L/62-6	Public Defender	Re retirement of deputies in Public Defender's Office at age 65.

Received of the Treasurer of the
Board of Directors of the
City of New York the sum of
Twenty Dollars for the
year ending December 31st 1875

Amount
\$20.00

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Board of Directors of the
City of New York the sum of
Twenty Dollars for the
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year ending December 31st 1875

Amount
\$20.00

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
L/62-7	Public Defender	Application of Section 16.42 San Francisco Administrative Code to resignation from city service and reappointment of occupant of position of Chief Attorney (criminal).
62-42	Public Health Department	Regulations concerning preparation and sale by retail markets of frozen meats.
L/62-9	"	City's liability to riders in emergency hospital ambulances.
63-7	"	Refuse collection; San Francisco water front.
L/62-18	Public Utilities Engineering Bureau	San Francisco Bay Area Rapid Transit District; proposed Market St. subway; financial responsibility.
62-41	Public Works Department	Temporary permit of occupancy 899 Pine Street, in light of Supreme Court order transferring case to it for hearing.
62-48	"	Assessment lien; cancellation of.
L/62-11	"	Automatic sprinklers in garbage and trash chutes in one and two-family dwellings.
63-25	"	Art Commission power to disapprove demolition of building in conjunction with construction of health center.
L/63-4	"	Fee for street occupancy permit; whether city, state and federal governments and their contractors are exempt from payment.
62-36	"	Appeals from decisions of City Planning Commission; sec. 307, art. 3, City Planning Code; inclusion of government property.
63-21	"	Building code; movable panels; whether wall or partition within the meaning of; provisions governing temporary partitions.
63-22	"	Board of Examiners; whether member of has personal interest in subject matter of application for variance and is disqualified from voting thereon.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
62-53	Recreation and Park Department	Lease of Police Academy to Boy Scouts.
63-16	"	Candlestick Park sports car races; use of highways; application of California Vehicle Code section 23109.
L/63-1	"	Contract with SESAC, Inc; utilization of copyrighted musical composition; infringement of copyright.
62-46	Retirement System	Right of Frank P. Smith to fluctuating pension.
62-51	"	Retirement Board; threatened taxpayer's suit; course of action to be followed in Harrison and Thielmeyer matter.
63-12	"	Police officer injured while performing police work outside territorial limits of City and County of San Francisco during "off-duty status" is entitled to Workmens' Compensation or "in lieu" benefits provided for in charter section 172.
63-13	"	Police officer injured while performing police work in San Francisco during an "off-duty status" is entitled to Workmens' Compensation benefits provided for in charter section 172.

DOCUMENTS DEPARTMENT

MAY 5 1966

500 TOWNSEND STREET, SAN FRANCISCO, CALIF. 94102



ANNUAL REPORT OF THE CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

JULY 1, 1963 - JUNE 30, 1964

THOMAS M. O'CONNOR
CITY ATTORNEY

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CITY AND COUNTY OF SAN FRANCISCO

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THOMAS M. O'CONNOR
CITY ATTORNEY

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I. LITIGATION SECTION

I. LITIGATION SECTION

A. ACTIONS AND PROCEEDINGS CONCLUDED

This office in the last fiscal year concluded a total of 896 actions and proceedings, comprising 543 tort actions which involved suits for personal injury or property damage and 164 nontort actions which arose generally from the activities of boards, commissions and departments of the City and County; 182 Workmen's Compensation proceedings, and 7 proceedings before federal and state regulatory boards and commissions, as follows:

Tort Actions

Electricity	1	
Housing Authority	1	
Library	2	
Municipal Railway	402	
Police	18	
Public Health	3	
Public Works	77	
Recreation and Park	16	
Retirement	1	
S.F. Unified School District	5	
Sheriff	1	
Water	16	543

Nontort Actions

Airport	3	
Chief Administrative Officer	1	
Civil Service Commission	3	
Controller	2	
Health Service	1	
Hetch Hetchy	1	
Juvenile Court	2	
Legion of Honor	1	
Mayor	2	
Parking Authority	1	
Planning Commission	3	
Police	1	
Public Health	13	
Public Utilities Commission	1	
Public Welfare	7	
Public Works	67	
Real Estate	3	
Recreation and Park	2	
Redevelopment Agency	9	121

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Nontort Actions (contd)

Registrar of Voters	2	
Retirement System	12	
S.F. Unified School District	1	
Superior Court	1	
Tax Collector	7	
Water Department	<u>20</u>	42

Workmen's Compensation Proceedings

(Hearings before State Industrial Accident Commission; see Part V of this report, titled "San Francisco City and County Employees' Retirement System")	<u>182</u>	182
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Federal and State Regulatory Proceedings

(Hearings before Federal Power Commission, Civil Aeronautics Board and California Public Utilities Commission; see Part IV of this report, titled "Public Utilities Section, and Part VII, titled "Rate Section") . . .	<u>7</u>	<u>7</u>
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<u>Total .</u>	<u>896</u>
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Detail of 543 Tort Actions Concluded

Municipal Railway

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	56	\$ 725,036	\$158,780
Litigated Settlements	<u>237</u>	<u>7,153,650</u>	<u>614,615</u>
<u>Total Judgments and Litigated Settlements</u>	293	\$7,878,686	\$873,395
Won or Dismissed	<u>109</u>	<u>1,895,891</u>	<u>-</u>
<u>Total</u>	<u>402</u>	<u>\$9,774,577</u>	<u>\$773,395</u>

Department of Public Works

Of the 77 actions concluded for the Department of Public Works, 48 cases involved sidewalk falls. Disposition of sidewalk-actions was as follows:

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	2	\$ 29,500	\$ 2,945
Litigated Settlements	<u>25</u>	<u>652,559</u>	<u>29,237</u>
<u>Total Judgments and Litigated Settlements</u>	27	\$ 682,059	\$ 32,182
Won or Dismissed	<u>21</u>	<u>548,989</u>	<u>-</u>
<u>Total</u>	<u>48</u>	<u>\$1,231,048</u>	<u>\$ 32,182</u>

The remaining 29 tort actions involving the Department of Public Works were disposed of as follows:

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	8	\$ 16,021	\$ 5,146
Litigated Settlements	<u>11</u>	<u>335,168</u>	<u>15,143</u>
<u>Total Judgments and Litigated Settlements</u>	19	\$ 351,189	\$ 20,289
Won or Dismissed	<u>9</u>	<u>497,713</u>	<u>-</u>
<u>Total</u>	<u>28</u>	<u>\$ 848,902</u>	<u>\$ 20,289</u>

Litigation With Western Pacific

City's suit for \$781,341.54, plus interest, against The Western-Pacific Railroad Company (Superior Court Action No. 527649)

was settled during the fiscal year for \$700,000. The suit arose out of the partial destruction of certain streets caused by the burning and collapse on June 30, 1962, of Western Pacific's Potrero Hill tunnel. The tunnel was constructed in 1908 with City approval. The Railroad's position was that apparently some wrongdoer set the tunnel afire, it was not guilty of negligence, no complaints about the tunnel had ever been made, and it was therefore not liable for the street damage and the cost to City for filling the abandoned tunnel. Some of City's items of damage were debatable and under all the circumstances, the settlement was believed reasonable.

Police Department

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	3	\$ 50,673	\$ 15,951
Litigated Settlements	<u>6</u>	<u>714,500</u>	<u>21,009</u>
<u>Total Judgments and Litigated Settlements</u>	9	\$ 765,173	\$ 36,960
Won or Dismissed	<u>9</u>	<u>366,657</u>	<u>-</u>
<u>Total</u>	<u>18</u>	<u>\$1,131,830</u>	<u>\$ 36,960</u>

Recreation and Park Department

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	6	\$ 5,537	\$ 1,078
Litigated Settlements	<u>5</u>	<u>65,515</u>	<u>6,055</u>
<u>Total Judgments and Litigated Settlements</u>	11	\$ 71,052	\$ 7,133
Won or Dismissed	<u>5</u>	<u>135,000</u>	<u>-</u>
<u>Total</u>	<u>16</u>	<u>\$ 206,052</u>	<u>\$ 7,133</u>

Water Department

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	3	\$ 328	\$ 328
Litigated Settlements	<u>5</u>	<u>41,979</u>	<u>5,003</u>
<u>Total Judgments and Litigated Settlements</u>	8	\$ 42,307	\$ 5,331
Won or Dismissed	<u>8</u>	<u>5,472</u>	<u>-</u>
<u>Total</u>	<u>16</u>	<u>\$ 47,779</u>	<u>\$ 5,331</u>

San Francisco Unified School District

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Judgments paid	-	\$ -	\$ -
Litigated Settlements	<u>1</u>	<u>75,468</u>	<u>3,522</u>
<u>Total Judgments and Litigated Settlements</u>	1	\$ 75,468	\$ 3,522
Won or Dismissed	<u>4</u>	<u>87,500</u>	<u>-</u>
<u>Total</u>	<u>5</u>	<u>\$ 162,968</u>	<u>\$ 3,522</u>

Other Departments

	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Electricity	1	\$ 25,000	\$ -
Housing Authority	1	15,000	-
Library	2	225	25
Public Health	3	131,325	-
Retirement	1	-	-
Sheriff	<u>1</u>	<u>150,000</u>	<u>-</u>
<u>Total</u>	<u>9</u>	<u>\$ 321,550</u>	<u>\$ 225</u>

All Tort Litigation Concluded

Recapitulation of Statistics

Table I

<u>Department</u>	<u>Number of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Municipal Railway	402	\$ 9,774,577	\$773,395
Public Works	77	2,079,950	52,471
Police	18	1,131,830	36,960
Recreation and Park	16	206,052	7,133
Water	16	47,779	5,331
S.F. Unified School District	5	162,968	3,522
Other Departments	<u>9</u>	<u>321,550</u>	<u>25</u>
<u>Total</u>	<u>543</u>	<u>\$13,724,706</u>	<u>\$878,837</u>

Table II

<u>Department</u>	<u>Number of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Municipal Railway	402	56	237	109
Public Works	77	10	37	30
Police	18	3	6	9
Recreation and Park	16	6	5	5
Water	16	3	5	8
S.F. Unified School District	5	-	1	4
Other Departments	<u>9</u>	<u>1</u>	<u>-</u>	<u>8</u>
<u>Total</u>	<u>543</u>	<u>79</u>	<u>291</u>	<u>173</u>

Detail of 164 Nontort Actions Concluded

Nuisance Abatement Actions

Nuisance abatement litigation arises by reason of failure of property owners to carry out administrative orders of the Public Works and Public Health Departments relating to the building and health laws.

Table I shows the number of abatement cases terminated.

Table II shows the method of compliance in cases terminated.

In addition to the 64 cases terminated after filing suit, 10 cases were terminated by negotiation prior to filing suit.

Table I

Nuisance Abatement Cases Terminated June 30, 1964

<u>Department</u>	<u>Referrals</u>	<u>Actions Filed</u>	<u>Litigated</u>	<u>Nonlitigated</u>	<u>Total</u>
Public Works	78	68	52	10	62
Public Health	<u>13</u>	<u>11</u>	<u>12</u>	-	<u>12</u>
<u>Total</u>	<u>91</u>	<u>79</u>	<u>64</u>	<u>10</u>	<u>74</u>

Table II

Nuisance Abatement Cases Terminated Method of Compliance

<u>Department</u>	<u>Demolition</u>	<u>Rehabilitation</u>	<u>Other</u>
Public Works	39	22	1
Public Health	<u>5</u>	<u>7</u>	-
<u>Total</u>	<u>44</u>	<u>29</u>	<u>1</u>

Eminent Domain Actions

Eminent domain actions filed either by or against the City and County were concluded by judgment, settlement or dismissal, as follows:

<u>Department</u>	<u>Number of Cases</u>
Airport	2
Hetch Hetchy	1
Public Works	10
Recreation and Park	2
Redevelopment	9
Tax Collector	6
Water	<u>14</u>
<u>Total</u>	<u>44</u>

Other Nontort Litigation

The balance of the nontort litigation involved generally actions on various City contracts and leases; writs of mandate against the Civil Service Commission by City employees regarding status and rates of pay, ballot and election matters against the Registrar and Mayor; lien enforcement litigation for Public Welfare Department; and Retirement System cases referred to in Part V of this report, titled "San Francisco City and County Employees' Retirement System," as follows:

<u>Department</u>	<u>Number of Cases</u>
Airport	1
Chief Administrative Officer	1
Civil Service Commission	3
Controller	2
Health Service System	1
Juvenile Court	2
Mayor	2
Palace of Legion of Honor	1
Parking Authority	1
Planning Commission	1
Police	1
Public Health	1
Public Utilities Commission	1
Public Welfare	7
Public Works	5
Real Estate	3
Registrar	2
Retirement	12
S.F. Unified School District	1
Superior Court	1
Tax Collector	1
Water Department	<u>6</u>
<u>Total</u>	<u>56</u>

B. CLAIMS FILED AND SETTLED

Claims filed and settled during the year were as follows:

<u>Department</u>	<u>Filed</u>	<u>Settled</u>
Municipal Railway	3,097	598 *
Public Works	267	28
Water	192	101
Recreation and Park	136	58
Police	108	28
Other Departments	<u>172</u>	<u>39</u>
<u>Total</u>	<u>3,972</u>	<u>852</u>

* This number represents claims of over \$500 in the evaluation of which this office participated.

Detail on the 254 claims settled for departments other than the Municipal Railway is as follows:

<u>Department</u>	<u>Number</u>	<u>Amount Paid</u>
Electricity	5	\$ 1,152.05
Fire	18	3,808.01
Library	1	14.98
Police	28	2,997.25
Public Health	6	359.09
Public Works	28	5,271.95
Recreation and Park	58	1,137.77
Registrar	2	110.00
S.F. Unified School District	7	2,518.65
Water	<u>101</u>	<u>23,508.13</u>
<u>Total</u>	<u>254</u>	<u>\$40,877.88</u>

C. ACTIONS PENDING

A total of 1549 actions were pending on July 1, 1964, comprising 1167 tort actions and 382 nontort actions.

Detail of 1167 Tort Actions Pending

<u>Department</u>	<u>Number</u>	<u>Prayers</u>
Agricultural	1	\$ 35,000.00
Airport	1	280.00
Coroner	1	75,000.00
County Clerk	1	200,000.00
Electricity	2	70,724.94
Fire	3	126,532.86
Health	14	5,338,091.70
Hetch Hetchy	4	193,000.00
Housing	1	10,000.00
Juvenile Court	2	900,000.00
Library	1	50,000.00
Municipal Railway	823	24,675,596.01
Palace of Legion of Honor	2	26,402.55
Police	53	5,623,660.33
Port Authority	1	100,000.00
Public Welfare	3	4,415.00
Public Works	187	8,915,968.01
Recreation and Park	22	858,832.30
Registrar of Voters	2	50,000.00
S. F. Unified School District	19	1,013,050.00
Sheriff	1	100,000.00
Water	22	511,226.42
Youth Guidance Center	<u>1</u>	<u>250,000.00</u>
<u>Total</u>	<u>1167</u>	<u>\$49,127,780.13</u>

Detail of 382 Nontort Actions Pending

<u>Department</u>	<u>Number</u>
Airport	8
Art Museum	1
Chief Administrative Officer	1
City Planning	6
Civil Service	11
Controller	1
County Clerk	1
Fire	1
Health Service System	1
Hetch Hetchy	18
Jury Commissioner	1
Juvenile Court	1
Municipal Court	1
Permit Appeals, Board of	4
Police	1
Public Health	4
Public Health (Abatement)	42
Public Welfare	6
Public Works	13
Public Works (Abatement)	139
Purchaser	1
Real Estate	36
Recreation and Park	3
Retirement System	26
S.F. Unified School District	5
Sheriff	1
Tax Collector	12
Water	36
Youth Guidance Center	<u>1</u>
<u>Total</u>	<u><u>382</u></u>

D. APPELLATE LITIGATION CONCLUDED

Appellate litigation concluded in the past fiscal year was as follows:

Flora Crane Service Inc. v. Ross,
61 A.C. 185;

Kinnear v. City and County of San Francisco,
61 A.C. 339;

Mass v. Board of Education,
61 A.C. 669;

City and County of San Francisco v.
Carraro,
220 A.C.A. 515;

The Sarah Dix Hamlin School v. City and
County of San Francisco,
221 A.C.A. 413;

Iscoff v. Police Commission,
222 A.C.A. 444;

Beck v. San Francisco Unified School
District,
225 A.C.A. 628;

Tomlinson v. City and County of
San Francisco,
227 A.C.A. 680.

Summary of Appellate Cases

<u>Department</u>	<u>Number of Cases</u>	<u>Court</u>
Assessor	1	District Court of Appeal
Board of Education	1	Supreme Court
	1	District Court of Appeal
Board of Permit Appeals. .	1	District Court of Appeal
Civil Service Commission .	1	Supreme Court
	1	District Court of Appeal
Controller	1	Supreme Court
Recreation and Park Commission	1	District Court of Appeal

A digest of the decisions of the Supreme Court and District Court of Appeal follows:

Flora Crane Service Inc. v. Ross, 61 A.C. 185 [judgment denying petition for writ of mandamus to compel Controller to certify availability of funds for contract performed without prior certification reversed by the Supreme Court];

Kinnear v. City and County of San Francisco, 61 A.C. 339 [judgment invalidating Charter §5, and ordering restoration of deputy sheriff who ran for election to office of sheriff, affirmed by the Supreme Court];

Mass v. Board of Education, 61 A.C. 669, [on August 11, 1964, the Supreme Court reversed the judgment of the Superior Court and ordered reinstatement of teacher and payment of salary from suspension date];

City and County of San Francisco v. Carraro, 220 A.C.A. 515 [judgment for City in eminent domain action affirmed by the District Court of Appeal];

The Sarah Dix Hamlin School v. City and County of San Francisco, 221 A.C.A. 413 [judgment for non-profit corporation holding it exempt from property taxes on property used exclusively for educational purposes, affirmed by the District Court of Appeal. See Part VI of this report, titled "Taxation Section"];

Iscoff v. Police Commission, 222 A.C.A. 444 [judgment denying petition for writ of mandate, following Police Commission's denial, concurred in by Board of Permit Appeals, of application for transfer of pawn broker's license to new location, affirmed by the District Court of Appeal];

Beck v. San Francisco Unified School District, 225 A.C.A. 628 [order granting District's motion for a new trial but denying motion for judgment notwithstanding the verdict in personal injury action, affirmed by the District Court of Appeal. Jury returned \$7,678 verdict against Board of Education in personal injury action. Following this decision, suit was settled for \$3,522];

Tomlinson v. City and County of San Francisco, 227 A.C.A. 680 [judgment denying petition for writ of mandate to compel payment of higher wage where lower wage was the proper wage, and Civil Service Commission timely corrected its prior certification to Board of Supervisors that higher wage was the prevailing wage, affirmed by District Court of Appeal].

II. LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

II. LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

In the last fiscal year the City Attorney rendered 63 legal opinions, 31 of which were letter opinions. Opinion titles are listed in Appendix A of this report according to department. The opinions were rendered at the request of the following officers, boards, commissions and departments of the City and County:

<u>Department</u>	<u>Opinions</u>	<u>Letter Opinions</u>
Board of Supervisors	10	14
Civil Service Commission	5	
Controller	1	1
Director of Public Works		1
District Attorney		1
Fire Department	2	1
Hetch Hetchy Department	1	
Library Commission	1	1
Manager of Utilities		2
Mayor		2
M. H. de Young Memorial Museum	1	
Planning Commission	1	1
Police Department	4	2
Public Health Department	1	1
Public Utilities Commission		1
Probation Department	1	
Purchaser	1	
Recreation and Park Department	1	
Tax Collector	2	1
Water Department		1
Utilities Engineering Bureau	—	<u>1</u>
Total	32	31
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III. LEGISLATIVE SECTION

III. LEGISLATIVE SECTION

A. BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

The most prolific single source of the general legal work of this office is in connection with the consideration and enactment by the Board of Supervisors of the laws and regulations governing the conduct of the people and the government of the City and County of San Francisco. With the expanding of governmental activities, new legal challenges and problems are constantly being presented requiring extended analysis, research and legal draftmanship in such fields as slum clearance, redevelopment, housing, human relations, off-street parking, transit, metropolitan government and many others.

This office is constantly engaged in the preparation of new legislation for the legislative body and has a representative in attendance at its meetings to offer advice and guidance in its deliberations with relation to its legal rights, powers and duties.

During the past year this office performed the legal work of analysis, preparation, review and approval on 337 ordinances and 722 resolutions that were enacted or adopted by the Board of Supervisors during the year, and 20 Charter amendments and 8 bond issues that were considered by the Board of Supervisors during this period.

In addition to oral opinions rendered the Board of Supervisors at its meetings, this office rendered 23 formal written opinions to the legislative body.

The following are illustrative of the diverse types of legislation that have been prepared and approved by this office during the year:

Human Relations Commission Ordinance

This ordinance creates a commission to work towards improved in-group relations and the elimination of discriminatory practices in the City and County; it further prohibits the practice of "blockbusting" by the real estate industry.

Municipal Parking Lot Ordinance

This ordinance contains detailed provisions for the regulation and conduct of municipally-owned off-street parking lots in neighborhood shopping centers.

Regulations of Private Off-Street Parking Ordinance

This ordinance was passed as an emergency measure to prevent self-service parking lots from removing vehicles therefrom without giving the owners of the vehicles some notice of their intention. A permanent ordinance regulating self-service parking lots was also drafted and submitted to the Board of Supervisors.

Community Antenna Franchise Ordinance

This office participated in negotiations and the final drafting of a franchise ordinance for the granting of a franchise to Television Signal Corporation, Inc., for the use of City streets and other public places for the rendition of community antenna services to subscribers within San Francisco. This nonexclusive franchise was granted by the Board of Supervisors for a term of twenty-five years, and contains provisions requiring payment of compensation to the City, and the performance by the franchise holder of terms and conditions designed to protect the public interest.

Rent Supplementation Resolution

The purpose of this resolution is to establish a program for supplemental rental payments on behalf of persons displaced by public action.

Moderate Income Housing Resolution

The purpose of this resolution is to provide funds to encourage and aid nonprofit and charitable groups to construct privately owned and moderately priced housing for individuals and families displaced by public action.

Association of Bay Area Governments

Legislation was prepared authorizing the City and County to join this association and the by-laws of the association were digested in order to determine its powers and in what areas the association was authorized to act.

Recodification of Public Utilities Code

This entailed a complete analysis of this code and the preparation of ordinances repealing obsolete sections and transferring other sections to the Traffic Code.

B. CALIFORNIA STATE LEGISLATURE

No regular session of the California State Legislature was scheduled this year. However, the Governor called a special session which ran concurrently with the annual budget session. At this special session a number of bills were introduced which were of general interest to the City and County of San Francisco and were reviewed by this office and, where necessary, action was recommended to the State Legislative Committee. One set of bills which dealt with a proposed moratorium on the filling of the San Francisco Bay was opposed by the City and County. This office presented evidence in support of the opposition to these bills and urged that the matter of a moratorium on Bay fill be left to local action by the cities and counties whose territory included parts of the Bay. The Legislature referred all of the moratorium bills to interim study.

On the subject of Bay fill, Senator J. Eugene McAteer introduced Senate Bill No. 14, which was supported by the City and County of San Francisco and enacted into law. This statute creates a commission to study the problems relating to the continued filling of the Bay and is required to make its report and recommendations to the State Legislature at the beginning of the 1965 Session. The commission is presently being organized and this office is prepared to assist it in this study.

The entire question of title, possession and use of tidelands is being examined by a joint interim committee of the Assembly and Senate, and this office is participating in conjunction with the Public Utilities Commission, the Recreation and Park Commission, the Chief Administrative Officer, and the Hunters Point Reclamation District Trustees by furnishing data and information to this committee relative to city-owned and privately-owned tidelands within the City and County.

As a corollary to the position taken by the City in its opposition to the State moratorium on Bay fill, this office has been actively participating with the members of the Association of Bay Area Governments in the drafting of a proposed uniform ordinance and a proposed joint exercise of powers agreement whereby the cities and counties located on the Bay would control further filling of Bay tidelands. Neither of these documents has been given final approval by any of the public entities involved but are still the subject of drafting meetings and conferences.

The Senate Interim Committee on Local Government is conducting hearings relative to the need for change in State laws which would restore the right of local government under certain circumstances and to enact regulations in fields in which the State Legislature has legislated. This office has been in touch with this committee and has indicated its opinion as to what type of legislation should be proposed. No meetings have been held as yet but one is scheduled for early fall, at which time this office will make a presentation as to the need for such legislation.

IV. PUBLIC UTILITIES SECTION

IV. PUBLIC UTILITIES SECTION

In the Utilities Division of the City Attorney's Office, the Public Utilities Counsel and the deputies working with him perform functions consisting of the rendition of legal advice to, and the handling of litigation for the departments under the San Francisco Public Utilities Commission. These departments include the San Francisco International Airport, the Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau, the Bureau of Light, Heat and Power, the Water Department, and the Municipal Railway.

A discussion will follow of the various legal matters which have been handled for these several departments, as well as for the Public Utilities Commission itself and for the General Manager of Public Utilities.

A. SAN FRANCISCO INTERNATIONAL AIRPORT

Litigated Matters

During the past year further proceedings were conducted in the litigation of Field v. City and County of San Francisco, in which certain property owners adjacent to the Airport complained of alleged noise and nuisances connected with jet plane operations at the Airport. Four property owners had filed a complaint against the City in the San Francisco Superior Court, with a prayer for \$200,000. In this action, after a demurrer and motion to strike had been sustained to the plaintiffs' original complaint, the plaintiffs filed a first amended complaint. Again, a demurrer and motion to strike portions of this amended complaint were filed on behalf of the City and County. A hearing was conducted thereon, and the matter has been briefed to present the legal issues involved to the Superior Court.

Another similar action was filed during this fiscal year in the San Francisco Superior Court by fifty-nine other property owners similarly situated. In this case, Andrako v. City and County of San Francisco, the plaintiffs prayed to recover alleged damages of \$2,950,000. This litigation has proceeded in the same manner as the Field case, and the City and County is now awaiting the Court's decisions on pending motions in both actions.

It should be noted in this connection that this office has been conducting research regarding similar litigation in the federal and state courts throughout the United States.

In the past fiscal year other litigation involving the Airport included various types of actions against the City and County. Two of such cases were decided in favor of the City, and eight are now pending. These latter include an action in eminent domain, involving condemnation for a Millbrae sewer line. This action is in process of settlement. In addition, seventeen cases involving

either personal injury or property damage have been taken over by our insurance carrier for defense.

Civil Aeronautics Board Proceedings

San Francisco and Oakland Helicopter Case. This office represented the City and County in all aspects of the expedited hearing which took place on this matter, and filed briefs therein. The Civil Aeronautics Board has rendered an opinion and order granting San Francisco and Oakland Helicopter Airlines a nonsubsidy certificate to render air service between San Francisco International Airport and the other requested locations in the Bay Area. The certificate granted was a permanent certificate, the first such certificate granted to any helicopter company.

Trans-Atlantic Route Renewal Case. This office participated in the filing of a brief with the Civil Aeronautics Board Examiner on November 4, 1963, urging that both Pan American Airways and Trans World Airlines, Inc. be granted permanent certification for operations from San Francisco to London and Paris, and also to points beyond these European cities. It was also urged that San Francisco, Los Angeles, Seattle and Portland be retained as coterminals pursuant to present certification.

San Francisco also requested that it be named as a coterminal if any new operating authority is granted as a result of certification proceedings. The Examiner's recommended decision has been issued, and the matter is currently pending before the Civil Aeronautics Board. The recommended decision is favorable to San Francisco's position upon the routes and terminal points in question.

Detroit-California Nonstop Investigation. This investigation has now been placed upon the hearing calendar by order of the Board. A Board hearing conference in which this office participated was held on June 3, 1964. The office will participate in the preparation and presentation of exhibits, and in hearings beginning on September 14, 1964.

The issue in this proceeding is the granting of competitive nonstop authority between San Francisco and Detroit, and between Los Angeles and Detroit. The position of the City is to obtain competitive nonstop authority and the institution of nonstop air service between San Francisco and Detroit.

United States-Caribbean-South America Investigation. This investigation has been considering the designation of gateway points for service to Latin America. This year an order was issued designating San Francisco, along with Los Angeles, as one of the two West Coast gateways for such service, thereby providing the Airport with an extended service area in its capacity as such a gateway. Board pre-hearing conferences have now been held in this matter,

exhibits are being prepared for filing, and hearings in which this office will be a participant will begin on January 26, 1965.

California Public Utilities Commission Rate Proceedings

Western Airlines Fare Investigation. This proceeding was initiated before the California Public Utilities Commission by Oakland and San Diego to seek review of certain airline coach rate reductions between San Francisco and Los Angeles by Western Airlines in order to meet other competitive fares. This office participated in the filing of exhibits and in the hearings which were conducted by authority of the Commission. An order was entered requiring the establishment of comparable fares for equivalent service between the aforementioned points.

For a review of the status of the assessment of Airport lands by San Mateo County and the proceedings before the State Board of Equalization, see Part VI of this report, titled "Taxation Section."

Nonlitigated Matters

In the course of the last year, this office assisted in the drafting of numerous leases and other instruments for the Airport Department, attended conferences, and rendered advice on the numerous transactions with airlines, tenants, concessionaires, utilities, and others serving the Airport.

A major function of this office is the drafting and participation in the negotiation of lease and concession agreements, and in the past year approximately fifteen leases or agreements were drawn, or amendments thereto prepared, after consultation with the Airport Department. These included a land lease of Plot 1A to Pan American Airways, a lease of Pier D to Delta Air Lines, and a lease of space inside Pier D to Pacific Southwest Airlines; various leases for room space and for a gasoline satellite tank; and U-drive agreements and an agreement for Airport shuttle bus service in connection with temporary parking facilities during construction of the Airport garage. In this latter connection, an ordinance was drafted to amend the Administrative Code so as to require parity pay in all contracts providing for the rendition of such bus service. Upon approval of the ordinance, the bus service contract was advertised for public bid.

In addition, various documents, including insurance policies, bonds, assignments, and other legal instruments were reviewed and approved or revised; and resolutions were also drafted for action by the Commission in connection with many of the foregoing. These documents numbered more than three hundred.

Other legal matters were also handled for the Department, including representation of the Airport in a conference called by the District Attorney of San Mateo County at the instance of the California State Department of Fish and Game, at which joint steps were agreed upon in regard to action upon questions of possible Bay pollution. A matter was also conducted before the San Francisco Bay Region Regional Water Pollution Control Board, at which this office represented the City and worked with the Department and the Commission on a recommended program of compliance regarding certain modifications in the Airport storm drain system.

In addition, advice was given, both in writing and during attendance at numerous conferences on a number of subjects. Included were advice and conferences dealing with the question of a contract for U-Drive operations by the federal government, upon the right of airlines to remove fixtures from the premises and with the Post Office Department upon the lease of space for Post Office facilities.

B. HETCH HETCHY WATER SUPPLY, POWER
AND UTILITIES ENGINEERING BUREAU

Litigated Matters

The past year witnessed further major developments in the antitrust litigation which was previously filed by the City and County of San Francisco to recover overcharges in electrical equipment through collusion of bids and fixing of prices by electric manufacturers in connection with City's purchases for the Cherry Power Project and other public improvements.

The most significant developments were the filing of two additional actions concerning, respectively, purchases of six other categories of electrical equipment, and of hydraulic turbines for the Cherry Power Project costing \$2,000,000. Several actions previously on file were amended so as to include additional City purchases of electrical equipment beginning in the year 1948.

The eleven antitrust actions now on file seek recovery of overcharges on utility purchases in excess of \$8,000,000.

In order to secure evidence regarding the impact of the national electric antitrust conspiracy on the City and County, this office has participated in the national deposition program under which, by orders of the federal courts, uniform and centralized methods of deposition and discovery have been applied to all pending electric antitrust actions. During the year approximately thirty such national depositions were attended by this office in San Francisco and in other cities, and evidence was obtained regarding price fixing and collusion on bids on certain major purchases by the City and County.

Furthermore, a local series of pre-trial hearings has been

attended by this office in these cases, and pursuant thereto, interrogatories and other discovery documents have been exchanged between the parties as part of a continuing procedure. Also, the office has reviewed the results of the national program, including various proceedings in the eighteen hundred cases pending elsewhere, in order to obtain further information upon the latest developments.

As reported in the previous annual report, the litigation which had been brought by Allis-Chalmers Manufacturing Company against the City and County of San Francisco became final in the course of this fiscal year. Therein, a judgment had been rendered by the San Francisco Superior Court holding that the prior invitation for bids on the installation of hydraulic turbines for the Canyon Power Project was invalid. Pursuant to this judgment, a new call for bids was issued and thereafter an award was made which was not challenged. This matter involved the issue of the validity of a bid based on foreign-manufactured materials as against the contention that state statutes, i.e., the so-called "Buy American" Act, were not superseded by treaties of the United States and precluded such a purchase.

Another litigated matter in which the office represented the City and County during the year was an eminent domain action brought on behalf of the Department to acquire an easement for an electric power transmission line in Tuolumne County. The Real Estate Department has obtained all necessary easements by negotiation, and dismissal of the action is now scheduled. Six other litigated matters are pending, including the defense of four eminent domain actions brought by other entities to acquire Departmental property.

In the field of administrative proceedings attention should be directed to the proceeding involving the New Don Pedro Project now pending before the United States Court of Appeals for the Ninth Circuit, in which the various parties are seeking review of the Federal Power Commission proceeding. By reason of City's participation in this project, this office has been working in close cooperation with the Turlock and Modesto Irrigation Districts, both in their presentation before the Commission and as regards to their filing of briefs before the United States Court of Appeals.

Another subject of conference with the Department's staff and others has been the proposed Fourth Agreement with the said Districts, and a draft of this agreement is now under consideration and review by the Districts and City.

Another administrative proceeding in which the office participated was the filing of water rights applications by Tuolumne County and by Tuolumne County District No. 2 before the State's Water Rights Board. This group of applications concerns asserted rights on the Tuolumne and the Clavey Rivers. When this matter was set for hearing, meetings were held with all interested parties, and a compromise was arrived at protecting the rights of the various users of the waters in dispute.

Nonlitigated Matters

In the course of the past year, in numerous instances this office rendered advice on bids, contracts, water rights and other matters connected with the operations of this Department.

Consultation also took place with the Department and with the Commission on several important matters involving bids and contracts for the construction of the Canyon Project, particularly in reference to the legality of the acceptance of bids based upon equipment utilizing foreign components. The Department, the Commission and the Purchaser of Supplies were advised in regard to such matters. An important feature of such consultation and review was analysis of legislative matters pending before legislative and other bodies concerning matters in the field of water supply and water rights.

C. BUREAU OF LIGHT, HEAT AND POWER

Claims, insurance policies and other documents were reviewed for the Bureau. An important matter undertaken during the past year was the drafting of a charter amendment transferring street lighting construction, reconstruction and maintenance to the Department of Public Works. This charter amendment was recommended by the Commission, and was submitted by the Board of Supervisors and passed at the June 2, 1964, election.

D. WATER DEPARTMENT

Litigated Matters

During the past year, thirty-six different litigated matters were concluded by this office on behalf of the Water Department. These matters include a mandate action wherein the petitioner sought a writ of mandate to compel the Department to continue water service to residential facilities, despite nonpayment of water bills. The City and County obtained a judgment in a trial before the Superior Court, and thereafter successfully opposed the issuance of a writ of mandate in the District Court of Appeal. The Supreme Court thereafter denied a hearing, whereupon the judgment in favor of the City and County became final.

Other litigated matters in the course of being investigated and prepared for trial include eight actions in eminent domain, in which various entities seek to acquire interests in Water Department properties for other governmental uses. Several actions were tried as uncontested matters, with the rendition of judgments requiring payment of fair compensation to the City and County for the interest acquired. Three additional lawsuits were the subject of negotiated compromise during the year. Fifty-eight still pending and in the

course of preparation for trial include, besides actions in eminent domain, alleged personal injuries asserted to have arisen due to various Departmental installations, and miscellaneous actions involving various aspects of providing water service. One of the more important pending cases involves an allegation for damages for \$145,000 asserted to have resulted from the break of a Water Department main. Among said pending cases, five other actions involve alleged water main breaks.

In the course of the past year, the office filed two actions against others for damage to property of the Department. In addition, 192 claims were filed against the City involving Water Department operations. Of these, 101 were compromised and settled by payments aggregating \$23,508.13.

Nonlitigated Matters

A large volume of business involving negotiations for interests in lands, contracts, leases, licenses, insurance policies, relocation of facilities, and other matters was handled by this office in consultation with the Water Department during the year. These matters included consultation on rights-of-way, easements, and quarrying permits in connection with the construction of the James H. Turner Dam; advice on the legal aspects of excavations for the repair of Water Department facilities; lease and concession agreements for limited recreational uses of Water Department property; questions regarding acquisition of Water Department land for freeway purposes; an agreement and resolution for transfer of a pipeline to the City and County; special applications of Department rules and regulations; miscellaneous contractual matters; determination of rights under existing leases; determination, by way of opinion, of the rights of property owners regarding extension of water mains and services to serve their residences as regards a proposed relocation of water mains; interpretation of construction contracts; determination of rights under a pipeline easement; drafting of a lease of Department property for golf course purposes; successful prosecution of a claim against a bonding company to compensate for a default in an agricultural lease; and conferences with the San Francisco Port Authority and its representatives in order to resolve a legal issue which has arisen concerning obligations for the maintenance of water mains on Embarcadero piers. Research was also done upon such questions as the obligations of the Department concerning relocation of water mains, and regarding general legislative matters, including the consequences of the new State legislation governing municipal tort liability.

E. MUNICIPAL RAILWAY

Litigated Matters

The only nontort litigation which was undertaken on behalf

of the Municipal Railway during the past year was the defense of an action in mandate challenging the legality of the rates of pay of certain railway shop employees who asserted that under allegedly governing union scales they were entitled to a higher rate of compensation under Charter Section 151.3. This office participated in the preparation of a pre-trial statement, and the matter is awaiting setting for trial.

Nonlitigated Matters

A number of legal matters in this category were handled for the Railway during the year, including amendments to three basic leases under which Railway equipment is operated. These were the tire rental contract, and the fare box and diesel coach leases. Furthermore, this office rendered legal advice regarding the legal aspects of the sale of 66 used streetcars to the City for \$100 each. In relation to the same subject matter, the office also determined the obligations of the City under various leases for the rental of equipment in the event of the destruction of the same.

Besides the approval of contracts, insurance and bonds, a number of legal problems were studied and advice rendered in connection with Railway operations, and a number of resolutions and ordinances were drafted.

F. PUBLIC UTILITIES COMMISSION

The Public Utilities Counsel, in the course of the performance of his duties for the Commission and its component departments, reviews for approval three to four hundred contracts or contractual documents each year. Numerous other instruments are also reviewed in connection with this function of advising the Commission.

All Commission meetings are attended by the Public Utilities Counsel, or his representative, and the Commission is advised orally during the course of its meetings. Another function under the supervision of the Public Utilities Counsel is the review and presentation to the Commission of offers for the compromise of litigation arising out of the operations of the departments under its jurisdiction.

G. GENERAL MANAGER OF PUBLIC UTILITIES

Pursuant to its function as legal advisor, this office consults on many occasions with the General Manager of Public Utilities regarding the legal aspects of matters under his jurisdiction. For example, offers for the compromise of litigation are reviewed with the General Manager. Also, the office participates as an advisor to him in connection with his conduct of disciplinary

proceedings involving utility personnel. There were thirteen such proceedings during the year in which this office participated.

A proceeding is pending in the District Court of Appeal, under the title "McGill v. City and County of San Francisco," wherein the office obtained a judgment in favor of the City and County dismissing a petition for writ of mandate which had been sought by a limited tenure employee seeking reinstatement to the position from which he had been dismissed by the General Manager. The City Attorney's office has filed its brief in said Court, and the matter is currently awaiting oral argument.

V. SAN FRANCISCO CITY AND COUNTY
EMPLOYEES' RETIREMENT SYSTEM

V. SAN FRANCISCO CITY AND COUNTY
EMPLOYEES' RETIREMENT SYSTEM

A. RETIREMENT BOARD HEARINGS
AND OTHER LEGAL MATTERS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. Pursuant to Section 159 of the Charter, the City Attorney is an ex-officio member of the Retirement Board and during the past year a deputy city attorney has attended each of the weekly meetings of the Board as my authorized representative.

As reported in the last Annual Report, another deputy has been specifically assigned to act for this office as attorney for the Retirement System. Throughout the year, this deputy has been consulted on an almost daily basis in connection with the many and varied legal problems involved in the operation of the Retirement System. This deputy also attends each of the weekly meetings of the Retirement Board, cross-examines witnesses, and produces and examines witnesses, so that there will be a full presentation of all pertinent facts to the Board. During the year, this deputy has prepared for and participated in the presentation of approximately 77 cases before the Board, most of which required several hearings to complete.

In addition, this office is called upon to advise the Board as to the legality of its investments and, in particular, must review and analyze the voluminous documents involved in the purchase of certain bonds and other similar securities acquired by the Board.

B. COURT LITIGATION

This office represents the Retirement System and the Retirement Board both in the courts and before the Industrial Accident Commission. Most of the court litigation involving the Retirement System and the Retirement Board concerns the determination by the court as to who is entitled to benefits under the Retirement System, the extent of such benefits, or whether benefits have been improperly denied an applicant. Six such cases were litigated and terminated during the last fiscal year. Three other cases are pending.

In addition, this office is called upon to represent the Retirement System in actions for divorce, annulment, or separate maintenance involving employees of the City and County who are members of the Retirement System and therefore have contributed to the retirement fund. Although it is seldom necessary to prepare pleadings or appear in court in such cases, a considerable amount of time and effort is spent conferring with the attorneys and in

assisting them with the legal problems relating to the employee's contributions in the Retirement System.

This office has also been assisting the investigative staff of the System in the investigation and recovery of overpayment of pension made to retired persons, who, while engaging in gainful occupation, have not reported the full extent of their income from such occupation and as a result have received a greater pension than that to which they were justly entitled under the Charter. One such case reached the Superior Court by way of Petition for Writ of Mandate, whereby the employee sought to have declared invalid certain provisions of the Charter relating to gainful occupation and various rules adopted by the Board for use in the administration of those Charter provisions. This office was successful in upholding the validity of the Charter provisions and of the rules.

In addition, during the past fiscal year, three cases of overpayment of pension were prepared and presented to the Retirement Board for determination. These cases involved overpayment of pensions in the total sum of approximately \$14,520. An additional 16 cases were concluded administratively, many of them with assistance and advice from this office. These 16 cases resulted in the recovery of approximately \$28,624 in overpayments of pension. Several other such cases are currently being investigated by the Retirement System's staff and this office works closely with them to advise them as to the securing of appropriate evidentiary materials for presentation to the Board and also to resolve any legal problems involved in the conduct and completion of these investigations.

C. STATE INDUSTRIAL ACCIDENT COMMISSION PROCEEDINGS

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the Workmen's Compensation laws of the State of California for industrial injury to City employees. The City Attorney's office represents the City and County of San Francisco and the San Francisco City and County Employee's Retirement System in hearings and other Workmen's Compensation matters before the Industrial Accident Commission of the State of California. Hearings before the Commission are held where the City denies liability for the alleged injury or denies that the injury occurred, or where the City contests that disability resulted from the alleged injury, or where the City contests the duration of the disability or amount of permanent disability alleged.

The work load of this assignment increased to a greater extent this year due to the number of hearings and the time required for adequate preparation and presentation of evidence. The Industrial Accident Commission served this office with "Notices of Hearing Dates Set" for 203 hearings during this fiscal year, which averages 16.9 hearings per month, in which preparation must be made for taking testimony and presenting evidence on behalf of the City

and County and the Retirement System. Of the 203 hearings set, 47 were postponed to later dates for subsequent hearings but preparation must necessarily be made in anticipation of their being heard. The hearings varied in length from one hour to two days and in some cases over a period of days fractionally. Hearings can be set in any of the cities serviced by the Panel of the Commission where an applicant lives.

Claims were filed at the Industrial Accident Commission by employees of the following departments, during the year: Assessor, Fire, Health, Municipal Railway, Park and Recreation, Police, Public Defender, Public Welfare, Public Works, School, Sheriff, Superior Court, Tax Collector, Water and Registrar of Voters.

Matters which are decided by the Industrial Accident Commission are subject to petitions for reconsideration and to review before the District Court of Appeal. This office filed 6 petitions for reconsideration and 3 answers to petitions for reconsideration filed by applicants. Four petitions for writ of review were filed in the District Court of Appeal.

The City Attorney also represents the City and the Retirement System in the matter of subrogation of claims of the Retirement System against third parties who wrongfully cause injury to City employees, in order to obtain reimbursement for the amount of compensation paid and medical expenses expended for the benefit of such employees resulting from injuries sustained during the course and scope of their employment. Where an injured City employee commences an action in his own behalf against a third party causing his injury, the City has the right to intervene in order that the benefits paid to the City employee because of his injury may be recovered. During the past year, this office successfully completed 1 suit in intervention and 1 additional suit is pending. Where an injured City employee does not file suit on his own behalf, the City has the right to file an action in its own behalf against the third party causing the injury. In the past year this office has recovered judgment in 1 independent suit and obtained reimbursement by way of settlement without litigation in 11 other subrogation matters.

VI. TAXATION SECTION

VI. TAXATION SECTION

San Mateo County Taxation of Airport Lands. In accordance with resolutions of the Public Utilities Commission, taxes on property at San Francisco International Airport in the total amount of \$266,024.12 for the tax year 1963-1964 were paid under protest. Those taxes were levied upon the assessed value of \$3,422,385 for Airport property found to be proper by the State Board of Equalization after a full hearing of the matter in response to San Francisco's petition, and reflect an assessment reduction by the State Board of \$502,555 from the Assessor's values. A full review of the transcript of proceedings before the Appeal Board led to a recommendation, adopted by the Public Utilities Commission, that litigation of this tax question be discontinued.

Sarah Dix Hamlin School v. City and County of San Francisco, 1 Civil No. 21085, involved a suit for refund of property taxes levied upon a private school for girls which had claimed the welfare exemption provided for by the California Constitution and Revenue and Taxation Code. It was held by the Court that the taxed property was entitled to exemption as being that of a charity, even though tuitions exceeded costs of operation. Upon the strength of this decision, a rehearing of which was denied by the California Supreme Court, tax refunds were recommended by this office and passed by the Board of Supervisors to Town School for Boys, Presidio Hill School, and Burke School.

VII. RATE SECTION

VII. RATE SECTION

The City Attorney's office is charged with the responsibility of representing the City in actions which affect the City and County of San Francisco. One of the areas of action involves the representation of the City's interests before regulatory agencies on matters which will directly affect San Francisco and its residents.

This past year has witnessed three milestone cases in regulation in which the City Attorney's office actively participated. They will be separately covered in divisions A and B following.

In representing the City and its inhabitants careful consideration is given to those interests which would and should as a matter of right flow through to the consumer. This past year has witnessed several rate reductions and while the amounts saved on a customer basis may seem to be relatively small, the aggregate amounts are very large. In the utility cases mentioned below, where reductions were ordered during the year, the total amount to the consumer in San Francisco will approximate \$4,100,000 annually with refunds that have already or will be made in the future, amounting to \$13,700,000. Based upon last year's assessed evaluation of \$1,579,745,544, the annual savings would be equivalent to a reduction in the tax rate of 26 cents per \$100 assessed value. The refund portion would amount to a reduction in the tax rate of 87 cents per \$100 assessed value for the year. This exemplifies the magnitude of the refunds and rate reductions when expressed in terms of property taxes.

Continuing work is done on utility matters throughout the year. However, the major effort has been directed toward those cases in which rate relief has been requested. Set forth separately are the major accomplishments and activities engaged in during this past fiscal year.

A. FEDERAL POWER COMMISSION

Natural Gas Rate Proceedings

Of major accomplishment during the year was the settlement negotiated between the consumer representatives and company customers and the El Paso Natural Gas Company. The California Public Utilities Commission, the cities of San Francisco, Los Angeles and San Diego and the major gas distributing companies in California have over the past several years participated in and appeared before hearings held by the Federal Power Commission. Hearings were concluded in June of 1962, and in the following fall a decision was rendered on the rate of return issue in which the El Paso Natural Gas Company appealed before the courts for relief. Pending a decision and with the prospect of further reductions in

all other issues still before the Federal Power Commission for decision, the El Paso Company began negotiations to settle all cases pending before the Federal Power Commission. Offers were made in September of 1963, again in October and finally, after many conferences between the major parties in the case, the company agreed to refund approximately \$155,000,000. In November of 1963, a conference was held at the offices of the Federal Power Commission and all parties present agreed to the final settlement offer as proposed by the California Public Utilities Commission and accepted by El Paso.

To San Francisco consumers this represented an annual savings of \$575,000 and a one-time refund of \$8,200,000. This was the largest refund ever approved by the Federal Power Commission.

Another important case, Docket AR 61-1, was submitted for decision in November, 1963, for an examiner's opinion. This was the first of several area rate cases to be heard before the Federal Power Commission. A decision should be forthcoming this fall. The complexity of the case was enormous and the outcome will affect the price of natural gas to pipeline distributors, which will ultimately also affect the price paid by Pacific Gas and Electric and its consumers for this gas. Over two years were needed to hear all testimony and cross-examination. San Francisco appeared with and as a part of an overall coordinated effort of the California Intervenor Group composed of all the major gas distributing companies in California, the California Public Utilities Commission and several of the major cities.

B. CALIFORNIA PUBLIC UTILITIES COMMISSION

Telephone Company Investigation

The third major case before a regulatory agency involved The Pacific Telephone and Telegraph Company. There the California Public Utilities Commission issued an order instituting an investigation into the rates, rules, regulations and operations of the Pacific Company. This order was issued on July 26, 1962. In December of that year pre-hearing conferences were held and hearings began in January of 1963.

Presentation of the results of operations of the Pacific Company was introduced by the staff of the California Public Utilities Commission, and these studies indicated that Pacific was earning excess revenues amounting to \$32,000,000 annually.

The cities of San Francisco, Los Angeles and San Diego presented evidence and testimony indicating that the company was earning in excess of \$54,000,000, and that the rate of return should be 6.24 per cent.

Forty-nine hearing days were held in Los Angeles and San Francisco and the matter was finally submitted in November of 1963. The City Attorneys of San Francisco, Los Angeles and

San Diego joined in presenting their case, using the expert witnesses employed by San Francisco and Los Angeles in presenting evidence supporting lower rates for the major metropolitan areas. One of the major considerations in determining the level of rates is the rate of return allowed by the Commission on the property devoted to utility use. In the instant case the cities recommended a rate of return equal to the rate the Commission last found reasonable before the present rate of 6.75 per cent was established.

Decision No. 67369, rendered July 11, 1964, by the California Commission lowered the rate of return to 6.3 per cent. In addition, a \$40,000,000 annual reduction was ordered as well as a refund totaling some \$80,000,000. The refund was made effective the day the order instituting the investigation was signed by the Commission.

The company has since filed a petition for Writ of Review before the Supreme Court of the State of California asking that the decision of the Commission be set aside. It is the first major case in which a refund has been ordered in such a proceeding. At the time the investigation was initiated the rate of return of the company last approved by the Commission was 6.75 per cent, having been increased from 6.25 per cent in 1958.

Transportation

Hearings were held on the Southern Pacific Company's application for a reduction in commuter service, or in lieu thereof, an increase in rates of 30 per cent. Any reduction in service or increase in fares contributing to the already overcrowded freeway leading to San Francisco is certainly one of primary importance. Exhibits and testimony were introduced by this office to show that increased efforts by the company to advertise its services to firms and industries located in San Francisco should reverse the adverse patronage trend that has prevailed in the last several years. A survey of 45 leading independent businesses was made and the results introduced into the record. The case was submitted to the Commission on January 7, 1964, and a decision has just been rendered authorizing the company to discontinue three of the five trains it had requested, but not approving other changes requested by the company.

A split decision (3-2) was issued by the California Commission upholding the position of the City of Concord that maintenance of signals at railway crossings should be the continued responsibility of the railway. Concord's position was also urged in the hearing by San Francisco and the League of California Cities. The case in question was the result of a new subdivision in which the increase of traffic over a railroad crossing required the installation of automatic signals in which the City of Concord paid one half the cost. The railroad asked that one half the maintenance cost also be borne by the City of Concord. It was the position of the League and the cities involved that the crossing protection devices are the property of the railroad and the maintenance thereof should rightfully be borne by the railroad.

C. MISCELLANEOUS

Other items included continued assistance in the matter of towaway rates, electrical antitrust matters and a report to the Police Commission regarding Section 1076 (a) and (b) of the Municipal Code with respect to three applications, two for ricksha sightseeing permits and one for sightseeing bus operations.

VIII. OTHER SERVICES RENDERED TO CITY DEPARTMENTS

VIII. OTHER SERVICES RENDERED TO CITY DEPARTMENTS

A. CONTRACT PREPARATION AND REVIEW

During the fiscal year 214 contracts of the Department of Public Works and 51 contracts of the City Purchaser were reviewed and approved. A number of leases and other contracts were reviewed and approved for the Real Estate Department and Recreation and Park Commission.

The City Attorney's office also prepared a number of contracts for San Francisco General Hospital based upon negotiations conducted at conferences with interested parties, as follows: lease of X-ray equipment, agreement relating to the construction and maintenance of a Mental Retardation Center, agreement with the University of California School of Medicine for operation of a research project, a contract with San Francisco State College providing for clinical training of student nurses.

Palace of Fine Arts

This fiscal year marked the completion of the legal and other steps necessary for the commencement of the rehabilitation work on the Palace of Fine Arts. In connection therewith, this office negotiated and had executed three amendments to the agreement and lease between the State and the City, prepared four resolutions which were adopted by the Board of Supervisors, and performed the legal work necessary in connection with the approval of the construction contract by the State, the delivery of the deed and the policy of title insurance to the State and the payment by the State to the City of the State's contribution to the cost of the rehabilitation work. In addition, oral and written opinions were rendered on legal problems that arose during the year in connection with the project.

B. LEGAL CONSULTATION AND ADVICE

In addition to the requests for formal opinions (see Part II of this report, titled "Legal Opinions Rendered to City Departments"), other requests are made for legal research, advice and preparation of various documents concerning the manifold legal matters which arise in connection with the operations of various departments of City government. These requests are usually handled by memorandum to a deputy city attorney who is assigned to perform the legal work required. For the present fiscal year, 295 such work assignments were completed. Two hundred twenty-one work assignments were completed in the preceding fiscal year.

Legal advice is also rendered on a continuous day-to-day basis by telephone and in conferences with the personnel of the various City departments, at meetings of various boards and commissions of City government, and in consultation with City officers and with the personnel of various governmental agencies connected with City government. These departments, boards, commissions and agencies, in addition to the departments mentioned in previous sections of this report, include, among others, the Departments of Public Works, Health, Purchasing, Real Estate, Planning, Park and Recreation, and Public Welfare; the Board of Permit Appeals, Civil Service Commission, Youth Guidance, Health Service System, Parking Authority, San Francisco Unified School District, and the Redevelopment Agency.

For the purpose of illustrating this function of the office, there follows a summary of the kinds of legal work performed relating to the operations of the Health Service System, Redevelopment Agency, and Real Estate Department:

Health Service System

The Health Service System is administered by the Health Service Board. Pursuant to Section 172.1.1 of the Charter, the City Attorney is an ex-officio member of the Health Service Board and during the past year a deputy city attorney has attended the meetings of the Board as the representative of the City Attorney.

During the past year, the Board and the staff of the Health Service System have, with increasing frequency, called upon this office for advice and guidance in connection with the legal problems arising from the day-to-day operation of the System.

As has been reported previously, the Health Service Board adopted Rules and Regulations to govern the operation of the System effective March 1, 1962. Since that date, it has been particular concern of this office to review continuously the effect of these Rules and Regulations in the operation of the System, so as to discover any provisions which might require revision or modification. It was ascertained that certain portions of the Rules and Regulations were difficult to administer or required further clarification, and that certain new problem areas not covered by the Rules and Regulations had arisen. Consequently, during the past year, this office devoted considerable time and effort to a thorough revision of the Rules and Regulations. As a result of this work, new Rules and Regulations were adopted by the Board and became effective on July 1, 1964.

Although the operation of the Health Service System seldom produces any litigation, the case of McCann v. City and County of San Francisco, which was concluded during the past year, is of interest. This action, brought on behalf of all the members of the "old" Health Service System which was terminated on June 30, 1958, sought to have the surplus remaining from the operation of that

System transferred to the present Health Service System for the benefit of its members. This action was concluded during the past year, with the Superior Court ordering that the surplus funds, in the approximate sum of \$56,347, be transferred to the present Health Service System.

Redevelopment Agency

The Redevelopment Agency of the City and County of San Francisco is engaged in the preparation of a redevelopment plan to be presented to the Board of Supervisors for the redevelopment of the Western Addition A-2 Project, consisting of 276 acres with more than 1,400 parcels of land and some 15,000 people residing in the area. The Agency presently has under development three redevelopment projects in the City described as Western Addition A-1, Golden Gateway Area E-1 and the Diamond Heights Area B-1.

The Agency also has under consideration the redevelopment of South of Market Project Area D, generally embracing the area between Fifth and Second Streets between Stevenson Street and the Freeway.

The problems affecting redevelopment in San Francisco requiring the attention of my office are numerous and varied. They have included filing and processing of condemnation suits, reviewing legal documents and proposed legislation, and rendering opinions and advice to the Board of Supervisors in connection with redevelopment matters.

During the past year eight condemnation suits involving property in the Golden Gateway Area E-1 and one in the Western Addition Area A-1 were processed by this office. Seven of the cases were concluded by settlement negotiations and two by jury trial in Superior Court. Trials were conducted by Agency counsel.

Real Estate Department

The Director of Property is the head of the Real Estate Department and in general has charge of the purchase, sale and lease of real property by and for the City and County of San Francisco and the management of the Exposition Auditorium.

The City Attorney's office works very closely with the Real Estate Department in the handling of its many legal matters. This encompasses counsel and advice to the Director of Property and the right-of-way agents in his office on the legal problems that constantly arise in connection with the negotiations for the purchase of land for the City and County of San Francisco, the sale of surplus land for the City and County of San Francisco, the vacation of City streets and the operation of the Exposition Auditorium, as well as the drafting or approving of all leases or renewals of

leases of City-owned or leased property.

This office prepares all condemnation suits for the acquisition of land by the City and County of San Francisco, acquires immediate possession thereof where necessary and so authorized by law, and takes to trial all of such suits not otherwise settled. During the past fiscal year all of the property was acquired for the Ferry Park Project and the Mission-Hoff-Rondel Off Street Parking site, and a good portion of the property necessary for the first section of the Bosworth Street Widening Project -- all in connection with three separate condemnation suits brought by this office.

This office also defends the City and County of San Francisco in all suits brought by the State for the acquisition of land in connection with which the City might have any interest (which recently have become quite numerous) to obtain the fair market value of such land as might be owned by the City and County, and to recover any unpaid taxes as might be due and owing in connection with land within the City and County that might be privately owned. In this connection the office has collected and remitted thousands of dollars to the proper City departments during the current fiscal year. Presently there are pending 22 such suits brought by the State involving over 70 separate parcels of land.

APPENDIX A

APPENDIX A

INDEX OF OPINIONS RENDERED TO
CITY DEPARTMENTS DURING FISCAL YEAR 1963-1964

(See Part II of Report for Reference)

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
63-31	Board of Supervisors	Promotional Examination; list of eligibles established by promotional examination must be exhausted before eligible from entrance list may be certified.
63-39	"	No authority to prescribe voting residence for nonresident city employee.
63-42	"	Embarcadero freeway; ramps, redevelopment project area E-1 (Golden Gateway); rights, duties, privileges and obligations of federal government, State of California, Redevelopment Agency and City and County of San Francisco with respect to design, location and construction of freeway ramp.
L/63-11	"	San Francisco Unified School District; temporary assignment of certain employee under charter section 141.
L/63-12	"	Fire Department; temporary assignment under charter section 141 as relating to certain personnel of Fire Department.
L/63-13	"	Charter amendment requiring listing of campaign contributions.
L/63-14	"	Ordinance regulating self-service parking lots.
L/63-20	"	Adding section 222.2 to charter.
L/63-21	"	Motor vehicle license fees; use of local motor vehicle license fees to finance monorail system from San Francisco to airport and to defray San Francisco's share of Bay Area Rapid Transit District costs.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
L/63-22	Board of Supervisors	Art Commission; no authority to approve design of freeway ramps.
L/63-23	"	Prohibition of cemeteries in the City and County of San Francisco (Grace Cathedral).
L/63-27	"	Whether Local Agency Formation Commission has been created in City and County of San Francisco pursuant to provisions of local agency formation commission act, secs. 54775-54791, Government Code.
64-2	"	Parking; validity of ordinance imposing different penalties in different areas of city and county for identical purposes.
64-4	"	Taxation; jurisdiction of Board of Supervisors with respect to local assessment practices.
64-5	"	Human Relations Commission; state preemption as relating to various proposed activities thereof.
64-6	"	Refuse collection and disposal ordinance; interpretation of term "refuse" materials allowed to be placed in debris boxes.
64-8	"	Municipal Court budget estimate; authority of Mayor relative to and power of Board of Supervisors to allow amounts requested by court.
64-10	"	Whether property known as Alta Street extension has been dedicated and accepted as a city street.
64-14	"	Legality of legislation which prohibits the employment of a person who repeatedly offers himself for employment in place of an employee involved in a labor dispute.
L/64-2	"	Fontana Towers; validity of proposed retroactive height limitation legislation thereto.
L/64-4	"	File 432-63; agreement between Recreation and Park Commission and St. Francis Yacht Club.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
L/64-5	Board of Supervisors	Law enforcement; responsibility of Chief of Police, Police Commission, Mayor and Board of Supervisors to protect persons and property from injury.
L/64-9	"	Legal power of Board of Supervisors to appropriate funds for use of Post Office Department for night service.
L/63-9-A	Chief Administrative Officer	Ordinance re fees charged for various coroner services; incorporation of state law by reference.
64-9	Chief Probation Officer	Legality of allowing the Administration of Criminal Justice Committee of the San Francisco Bar Association to use office space in the Adult Probation Department for the purpose of a fact-finding project re persons charged with a crime who cannot afford bail.
63-41	City Planning	Requirement of notice of Planning Commission hearings re (1) proposal that special height limit districts be transferred to city planning code and (2) proposal that the new special height limit districts be established under city planning code.
L/64-1	"	Fontana Towers, whether height limitations of city planning code or any other section thereof is being violated in said construction.
63-35	Civil Service Commission	Salary increment to which an employee is entitled on changing position as governed by section VII of salary ordinance; employees Wong and Diamant.
63-38	"	Charter section 151.4.3; interpretation thereof re holidays occurring during an employee's vacation.
63-40	"	Child care centers; noncertificated personnel blanketed into civil service by enactment of 1963 state legislation.
64-1	"	Effect of 1954 amendment to charter section 146.1 on eligible lists established prior thereto.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
64-12	Civil Service Commission	Whether employees under section 151.3 of charter sent home from their regular shift because they had worked long overtime hours in an emergency are entitled to regular pay for that shift.
64-3	Controller	Charter section 92; application of provisions thereof to proceeds received from state for taking park lands in condemnation proceeding.
L/64-8	"	Application of California sales and use tax to the McNaughton libraries contract.
L/63-16	District Attorney	Police inspector on an indefinite leave of absence to accept position of investigator, District Attorney's office; right to return to rank of inspector at termination of leave.
63-29	Fire Department	Power to compel evacuation of buildings which or near which immediate hazard of explosion exists.
63-32	"	Right of department to use central fire alarm station in Jefferson Square for headquarters.
L/64-6	"	Use of firehouse for historical museum purposes; use of civil service firemen as guides; liability of city.
63-30	M. H. de Young Memorial Museum	Exemption of museum conservator classification from civil service provisions of charter because of similarity to curator classification.
L/63-10	Manager of Utilities	Airport courtesy coach service.
L/63-26	"	Water Department Contract No. 1138 (debris burning--Turner Dam).
L/63-28	Mayor	Proceedings for special election; vacancy in 5th congressional district.
L/64-3	"	Reconstruction of Palace of Fine Arts; scope of project; requirements under bond proposal; state appropriation and Walter S. Johnson gift.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
63-44	Police Commission	Permits to operate vehicles for transportation of handicapped persons; jurisdiction of operation.
64-11	"	Trial by Police Commission subsequent to disciplinary action of chief under section 155 of charter.
63-34	Police Department	"Sandwich peddlers"; whether included under the provisions of section 132(b) of the San Francisco Municipal Code licensing "rolling grocery stores."
63-36	"	Reinstatement of member of Police Department to position of civil service classification upon release from active military service (Edward Penaat).
L/63-18	"	Sections 10.23 and 10.24 of the San Francisco Administrative Code; procedure where payment of claim of Police Department is paid in full.
63-37	Public Health	Property under jurisdiction of Hassler Health Home; use thereof as 4-H farm project area pursuant to lease.
L/63-15	"	Billing procedure; San Francisco General Hospital.
63-43	Public Library	Fuhrman and Waden bequests; liability of Library Commissioners for proper management of investments.
L/63-25	"	Public records; taped transcript of testimony before Library Commission at regular meeting.
L/64-10	Public Utilities	Municipal Railway Contract No. 483 (West Coast Electric Co. bid).
L/63-24	Public Works	Liability of city for installation of "U-turn OK" signs at signalized intersection.
L/63-9-B	Purchaser	Sale of surplus city equipment; necessity of advertising for bids.

<u>Number</u>	<u>Department</u>	<u>Title of Opinion</u>
64-7	Purchaser	Purchaser is not required to enter into an agreement under section 88 of the charter in connection with loaned exhibits to the de Young Memorial Museum and the California Palace of the Legion of Honor.
64-13	Recreation and Park	Authority for City and County of San Francisco to accept a deed or to lease from a private developer open space to be used as a public park or playground.
63-28	Tax Collector	Real property owned by Kingdom of Greece and used as consulate general's office.
63-45	"	Contractor's license tax; legality thereof; effect of Attorney General's Opinion No. 63-111.
L/63-19	"	Reproduction of tax assessment roll for private purposes.
L/64-7	Utilities Engineering Bureau	City permit control of federal construction at airport.
63-33	Water Department	Action necessary to effect transfer of all responsibility for street lighting from Public Utilities Commission to Department of Public Works.
L/63-17	"	Forest Hill water mains.

